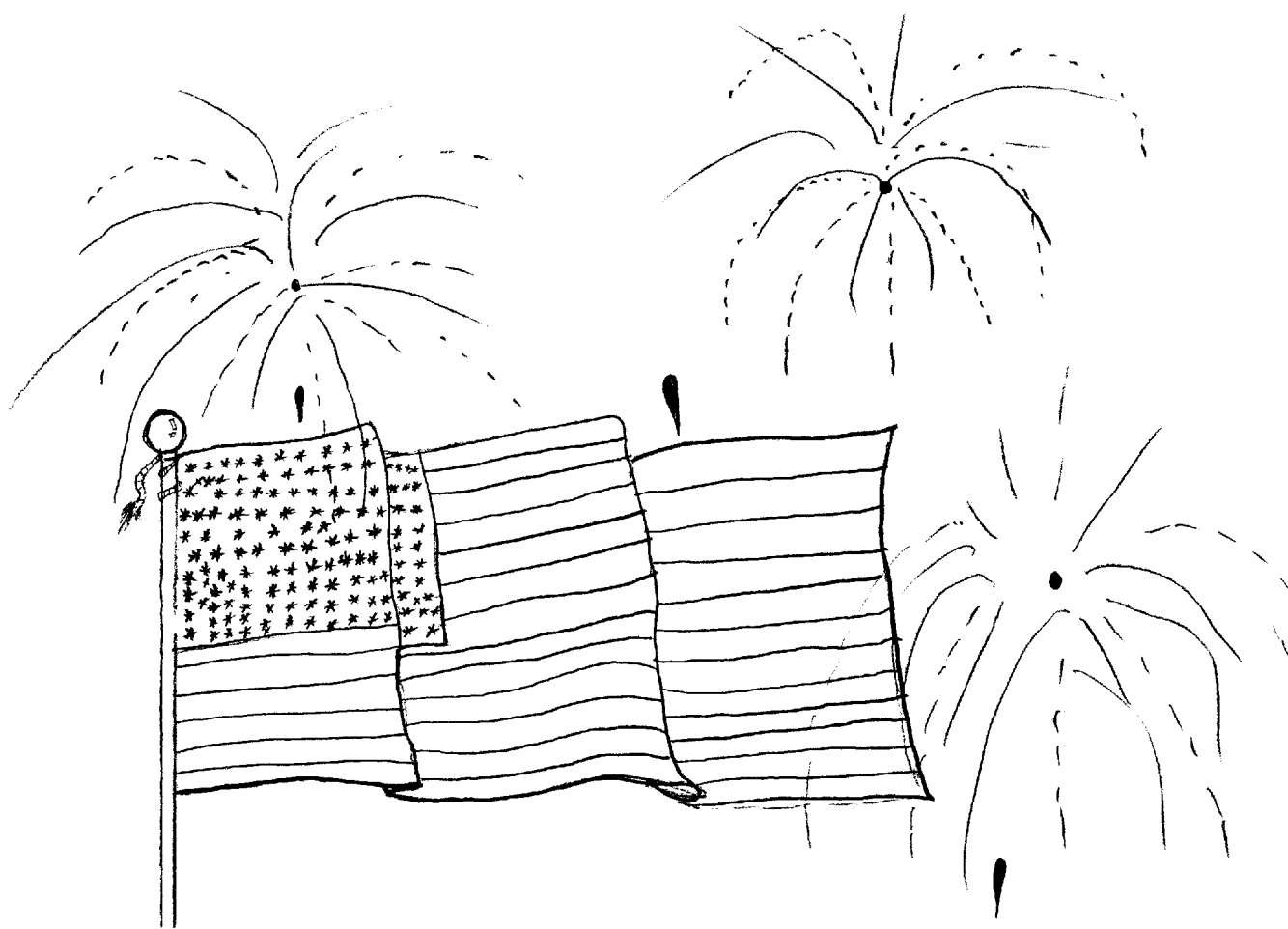

TEXAS REGISTER

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IN THIS ISSUE

ATTORNEY GENERAL

Request for Opinions	4165
----------------------------	------

PROPOSED RULES

OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION

10 TAC §§179.1 - 179.6	4167
------------------------------	------

TEXAS ALCOHOLIC BEVERAGE COMMISSION

LICENSING

16 TAC §33.23	4170
---------------------	------

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.1017	4170
-----------------------	------

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

ARCHITECTS

22 TAC §1.65	4172
--------------------	------

22 TAC §1.192	4173
---------------------	------

LANDSCAPE ARCHITECTS

22 TAC §3.65	4173
--------------------	------

INTERIOR DESIGNERS

22 TAC §5.75	4174
--------------------	------

ADMINISTRATION

22 TAC §7.10	4175
--------------------	------

BOARD OF TAX PROFESSIONAL EXAMINERS

REGISTRATION AND CERTIFICATION

22 TAC §623.8	4175
---------------------	------

22 TAC §623.9	4176
---------------------	------

22 TAC §623.10	4176
----------------------	------

22 TAC §623.12	4177
----------------------	------

22 TAC §623.17	4178
----------------------	------

22 TAC §623.18	4178
----------------------	------

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE

31 TAC §51.601	4181
----------------------	------

31 TAC §§51.606 - 51.611	4182
--------------------------------	------

31 TAC §§51.621 - 51.624	4183
--------------------------------	------

31 TAC §51.631, §51.632	4184
-------------------------------	------

31 TAC §§51.641 - 51.643	4184
--------------------------------	------

31 TAC §51.651, §51.652	4185
-------------------------------	------

31 TAC §51.661, §51.662	4185
-------------------------------	------

31 TAC §§51.671 - 51.674	4186
--------------------------------	------

FINANCE

31 TAC §53.3, §53.5	4187
---------------------------	------

31 TAC §53.60	4188
---------------------	------

FINANCE

31 TAC §53.91	4191
---------------------	------

31 TAC §53.110	4191
----------------------	------

LAW ENFORCEMENT

31 TAC §55.1	4193
--------------------	------

OYSTERS AND SHRIMP

31 TAC §58.11, §58.22	4195
-----------------------------	------

PARKS

31 TAC §59.2	4196
--------------------	------

31 TAC §59.221	4198
----------------------	------

WILDLIFE

31 TAC §65.4	4199
--------------------	------

31 TAC §65.19	4200
---------------------	------

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §108.293, §108.295	4202
---------------------------------	------

WITHDRAWN RULES

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.1017	4207
-----------------------	------

ADOPTED RULES

OFFICE OF THE ATTORNEY GENERAL

TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

1 TAC §§60.1 - 60.3, 60.5, 60.6, 60.9 - 60.13	4209
---	------

1 TAC §§60.101 - 60.103	4210
-------------------------------	------

1 TAC §§60.201, 60.202, 60.204, 60.205, 60.208	4210
--	------

1 TAC §60.209	4210
---------------------	------

1 TAC §60.301	4210
---------------------	------

1 TAC §§60.405, 60.408, 60.409	4211
--------------------------------------	------

TEXAS DEPARTMENT OF AGRICULTURE

PESTICIDES

4 TAC §7.52, §7.53	4211
--------------------------	------

TEXAS EDUCATION AGENCY

INTERAGENCY COORDINATION		MEDICALLY DEPENDENT CHILDREN PROGRAM	
19 TAC §92.1001, §92.1003.....	4211	40 TAC §§51.101, §51.103	4220
TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD		40 TAC §§51.201, 51.203, 51.205, 51.207	4220
RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT		40 TAC §§51.211, 51.213, 51.215, 51.217, 51.219, 51.221	4220
22 TAC §153.9	4212	40 TAC §§51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243.....	4221
TEXAS STRUCTURAL PEST CONTROL BOARD		40 TAC §51.251	4221
UNLAWFUL ACTS AND GROUNDS FOR REVOCATION		40 TAC §§51.301, 51.303, 51.305, 51.307, 51.309	4221
22 TAC §597.1	4212	40 TAC §§51.321, 51.323, 51.325, 51.327, 51.329, 51.331	4221
22 TAC §597.3	4212	40 TAC §§51.401, 51.403, 51.405, 51.407	4222
TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM		40 TAC §§51.411, 51.413, 51.415, 51.417, 51.419	4222
PRACTICE AND PROCEDURE REGARDING CLAIMS		40 TAC §51.421	4223
34 TAC §101.2	4213	40 TAC §51.431, §51.433	4223
CALCULATIONS OR TYPES OF BENEFITS		40 TAC §51.441	4224
34 TAC §103.2	4213	40 TAC §51.451	4224
34 TAC §103.6	4214	40 TAC §§51.461, 51.463, 51.465	4224
34 TAC §103.7	4214	40 TAC §§51.471, 51.473, 51.475, 51.477, 51.479	4224
MISCELLANEOUS RULES		40 TAC §§51.501, 51.503, 51.505, 51.507, 51.509, 51.511, 51.513, 51.515.....	4225
34 TAC §107.2	4214	MEDICATION AIDES--PROGRAM REQUIREMENTS	
34 TAC §107.5	4215	40 TAC §§95.101, 95.103, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, 95.128.....	4226
DOMESTIC RELATIONS ORDERS		RULE REVIEW	
34 TAC §109.12	4215	Proposed Rule Review	
TEXAS DEPARTMENT OF PUBLIC SAFETY		Texas Parks and Wildlife Department.....	4229
PUBLIC SAFETY COMMUNICATIONS		TABLES AND GRAPHICS	
37 TAC §§9.21 - 9.24.....	4216	4231
TEXAS COMMISSION ON FIRE PROTECTION		IN ADDITION	
FEES		Texas State Affordable Housing Corporation	
37 TAC §437.5	4216	Notice of Public Hearing	4237
CONTINUING EDUCATION		Office of the Attorney General	
37 TAC §441.21	4217	Notice of Settlement of a Texas Solid Waste Disposal Act and Rules and Regulations of the Texas Commission on Environmental Quality	4237
DEPARTMENT OF AGING AND DISABILITY SERVICES		Texas Building and Procurement Commission	
COMMUNITY CARE FOR AGED AND DISABLED		Request for Proposals	4237
40 TAC §48.1301	4218	Coastal Coordination Council	
WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN		Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	4238
40 TAC §§51.1 - 51.5, 51.7, 51.31, 51.39.....	4220	Office of Consumer Credit Commissioner	
		Notice of Rate Ceilings.....	4239
		Texas Commission on Environmental Quality	

Notice of Final Deletion of the McNabb Flying Service Proposed State Superfund Site from the State Superfund Registry.....	4239
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	4240
Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions	4241
Notice of Water Quality Applications.....	4241
Proposal for Decision.....	4244
Proposed Enforcement Orders	4244
Request for Nominations for Appointment to the Pollution Prevention Advisory Committee.....	4247
Department of State Health Services	
Licensing Actions for Radioactive Materials.....	4248
Notice of Agreed Order with East Texas Medical Center	4252
Notice of Agreed Order with Eastex Veterinary Clinic, P.A.....	4252
Notice of Emergency Cease and Desist Order on Empowerment Schools--Healthcare Limited	4252
Notice of Hearing Concerning Amendment Number 32 to the License of Waste Control Specialists, L.L.C.....	4253
Notice of Intent to Revoke Certificates of Registration	4253
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on David Thalman Vacuum Service, Inc.	4254
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Karnes County Hospital District, dba Otto Kaiser Memorial Hospital	4254
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Radiation Oncology of the South Plains	4254
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Reed Engineering Group, Ltd.	4254
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Trace Radiochemical, Inc.	4254
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Ward Beecher, D.C., dba Beecher Chiropractic Clinic.....	4254
Texas Health and Human Services Commission	
Request for Proposals	4255
Texas Department of Housing and Community Affairs	
Request for Proposals	4255
Texas Department of Insurance	
Company Licensing	4257
Third Party Administrator Applications	4257
Legislative Budget Board	
Notice of Contract Award	4257
Notice of Contract Award	4258
Notice of Contract Award	4258
Notice of Request for Proposals	4258
Public Utility Commission of Texas	
Draft Amendments (Strawman) to §25.214 and the Pro-Forma Retail Electric Delivery Service Tariff Available for Comments	4258
Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Loving, Ward and Winkler Counties, Texas.....	4259
Notice of Application for Amendment to Certificated Service Area Boundary	4259
Notice of Application for Amendment to Service Provider Certificate of Operating Authority	4259
Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority	4260
Notice of Application to Relinquish a Service Provider Certificate of Operating Authority	4260
Notice of Filing Made for Approval of a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171	4260
Notice of Relinquishment of Designation as an Eligible Telecommunications Carrier/Eligible Telecommunications Provider	4260
Request for Proposal	4261
Texas Residential Construction Commission	
Correction of Error.....	4261
Texas Department of Transportation	
Public Hearing Notice - Statewide Transportation Improvement Program	4261
Texas Water Development Board	
Applications Received	4262

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.
<http://www.state.tx.us/Government>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0357-GA

Requestor:

The Honorable Kurt Sistrunk
Galveston County Criminal District Attorney
722 Moody, Suite 300
Galveston, Texas 77550

Re: Whether a "poker run" sponsored by a nonprofit organization violates the gambling statute, chapter 47, Texas Penal Code (RQ-0357-GA)

Briefs requested by August 1, 2005

RQ-0358-GA

Requestor:

Ms. Karen Stanfill, Chair
Rehabilitation Council of Texas
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard
Austin, Texas 78756

Re: Whether holdover provisions of the Texas Constitution as applied to members of the Texas Rehabilitation Council conflict with federal law (RQ-0358-GA)

Briefs requested by August 1, 2005

RQ-0359-GA

Requestor:

The Honorable Eddie Lucio Jr.
Chair, Committee on Border Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Whether various conflict-of-interest provisions preclude an official or employee of the Brownsville Housing Authority or the Brownsville Housing Finance Corporation, or a relative of such person, from purchasing real property offered for sale by the Brownsville Housing Finance Corporation (RQ-0359-GA)

Briefs requested by August 7, 2005

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200502863
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 13, 2005

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 179. TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION

10 TAC §§179.1 - 179.6

The Office of the Governor, Economic Development and Tourism Division, proposes new Chapter 179, §§179.1 - 179.6, Texas Small Business Industrial Development Corporation, relating to use of bond proceeds from the Texas Public Facilities Capital Access Program, Series 1986, for the Texas Industry Development Program as authorized by the Development Corporation Act of 1979 (the Act), Texas Civil Statutes, Article 5190.6. The program is administered by the Texas Economic Development Bank (the bank) created within the Office of the Governor, Economic Development and Tourism Division, pursuant to Texas Government Code, Chapter 489, Subchapters A and B.

The proposed new rules are necessary to implement a program that will finance economic development projects in the state. Use of funds under the program will be approved by the board of directors of the Texas Small Business Industrial Development Corporation appointed under Section 4 of the Act in accordance with the Act, the bond covenants, and these rules.

Proposed §179.1 limits the scope of the rules.

Proposed §179.2 defines terms used in the rules.

Proposed §179.3 sets out guidelines for the use of bond proceeds and for the filing of bond procedures.

Proposed §179.4 sets out guidelines for project eligibility, costs and objectives.

Proposed §179.5 sets out loan requirements.

Proposed §179.6 sets out reporting and monitoring requirements.

Mike Chrobak, Chief Financial Officer for the bank, has determined for each year of the first five years that the rules are in effect there will be no fiscal implications to the state or to local governments as a result of the rules. No cost to either government or the public will result from the rules. There will be no cost to small businesses or micro-businesses.

Mr. Chrobak has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules is the economic benefit to the state that results

from the implementation of the program and resulting public and private economic development projects. No economic costs are anticipated to persons who are required to comply with the proposed amendments, other than fees charged to program users.

Written comments on the proposed rules may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, faxed to (512) 463-1932, or emailed to rabbott@governor.state.tx.us. Comments should be addressed to the attention of Robin Abbott, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed rules.

The new rules are proposed pursuant to Texas Government Code, §489.002, which authorizes the division to adopt rules for implementation of the program, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 489, and Texas Civil Statutes, Article 5190.6 are affected by this proposal.

§179.1. Scope.

The rules in this chapter apply only to the Texas Small Business Industrial Development Corporation.

§179.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Development Corporation Act of 1979, as amended, Texas Civil Statutes, Article 5190.6.

(2) Applicant--Any user authorized in the program guidelines; may include any user who proposes to acquire, or construct, or invest in the construction of a project on terms and conditions prescribed by the corporation.

(3) Bank--means the Texas Economic Development Bank established under Government Code, Chapter 489.

(4) Board of Directors--The Texas Small Business Development Corporation Board of Directors as defined by the Development Corporation Act of 1979, Texas Civil Statutes, Article 5190.6, §4(d).

(5) Bond program--Any bond program adopted and implemented by the corporation for the issuance of its single or composite issue bonds.

(6) Chief Financial Officer (CFO)--The Chief Financial Officer of the Texas Economic Development Bank.

(7) Code--The Internal Revenue Code of 1954, as amended, and includes the applicable treasury regulations promulgated thereunder.

(8) Corporation--The Texas Small Business Industrial Development Corporation.

(9) Division--The Economic Development and Tourism Division in the Office of the Governor, or any successor to its duties.

(10) Primary job--A job that is:

(A) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets, infusing new dollars into the Texas economy; and

(B) included in one of the sectors of the North American Industry Classification System (NAICS) listed in the Act.

(11) Program guidelines--The guidelines defining the scope and limitations of a bond program as approved by the Bank and adopted by the board of directors.

(12) Project--"Project" includes any use of amounts financed through the purchase by the Texas Small Business Industrial Development Corporation of bonds, notes, or other evidences of indebtedness of users under this subsection if the uses are found by the board of directors of the Texas Small Business Industrial Development Corporation to be required or suitable for the promotion of economic development in the state. Those findings may be based solely on a review by the board of directors of the Texas Small Business Industrial Development Corporation of the criteria used to determine eligibility of a user for obtaining a direct loan, grant, loan participation, insurance, or any other guarantee from the United States of America, the state, or any agency or instrumentality of either. Proceeds of bonds issued before September 1, 1987, may be used to pay all or part of the costs of a project regardless of whether the costs or project were within the definition of those terms under the Texas Department of Commerce Act before that date, or for any other purposes authorized by this Act.

(13) State--The State of Texas.

(14) Texas Industry Development (TID)--The name of the Texas Small Business Industrial Development Corporation program used for marketing purposes.

(15) Unit--The state.

(16) User--Any individual, partnership, corporation, or any other private entity, whether organized for profit, or a city, county, district, or any other political subdivision, public entity, quasi-governmental entity, or agency of the state or federal government.

(b) Each word, term, or phrase not otherwise defined in this section shall have the same meaning as it has in the Act.

(c) Amendment and suspension of the rules. These sections may be amended by the board of directors and the Executive Director at any time in accordance with the Administrative Procedure Act, Texas Government Code, Subchapter B, as amended. The Executive Director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the Executive Director, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(d) Application of sections. All sections shall be applied collectively, to the extent relevant, in connection with specific determinations made by the bank in the course of its administrative functions. The bank will make its determination on the basis of specific characteristics and circumstances of the individual application, and in light of the basic statutory purposes in the particular area.

(e) Examination of records. Any party requesting the examination of records pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552, shall indicate in writing the specific nature of the documents to be viewed, and if photocopying is desired, the prevailing standard fee of the office will be charged to cover the cost of the request.

(f) Written communication with the Division. Application and other written communications regarding the program should be addressed to the attention of the Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Industry Development Program, Post Office Box 12428, Austin, Texas 78711-2428.

(g) The corporation shall approve all fees and other charges to be paid out of the bond proceeds in a particular bond program.

§179.3. Bonds.

(a) Use of bond proceeds. The corporation may use the proceeds of bonds:

- (1) to fund reasonably required reserve accounts;
- (2) to pay all costs incurred in issuing the bonds; and
- (3) to either:

(A) fund a loan made by the corporation to an applicant to finance costs of a project as permitted under the Act and the Code; or

(B) refund or redeem all or part of any outstanding bonds of the corporation.

(b) In no event shall the corporation, the board, the governing body, or the unit have any obligation, financial or otherwise, to any person for failure of the corporation to issue, sell, or deliver its bonds.

(c) Bond procedures. The corporation shall file its bond procedures and any supplements or amendments thereto with the division as required by the Act. Initial bond procedures and any supplements or amendments thereto must be approved by the board of directors prior to filing with the division.

§179.4. Projects.

(a) Project eligibility. To be eligible for financing under any bond program, a project must meet certain minimum requirements. In general, a project must:

- (1) be located within the state;
- (2) consist of land, buildings, equipment, facilities, and improvements (whether one or more), and otherwise meet the definition of a project set forth in §2(11)(A) of the Act;
- (3) be eligible for tax-exempt financing under the Code, §103(b);
- (4) meet the applicable requirements of any third-party lender as to project size, location, and any other eligibility requirements of such third party; and
- (5) have project costs of at least five million.

(b) Project costs. To the extent not otherwise limited or prohibited by the program guidelines, an applicant may use bond proceeds to finance only those project costs which are eligible for financing under applicable provisions of the Code and the Act.

(c) Statement of objective. To qualify, a project must be found to be required or suitable for the promotion of economic development as deemed by the Corporation's board of directors in the performance of its public purposes, functions and duties.

(d) A project will not be eligible for funding under the program for moving existing jobs from one municipality or county in Texas to another municipality or county within the state.

§179.5. Loans.

(a) Term of loan. The following requirements regarding the maximum term of a loan apply to any loan made by the corporation.

(1) Real property. The maximum term of a loan to finance real property shall not exceed 20 years, and in no event shall such loan have a term beyond December 31, 2025.

(2) Tangible personal property. The maximum terms of a loan to finance tangible personal property shall not exceed 15 years, and in no event shall such loan have a term beyond December 31, 2025.

(3) Combined loans. The maximum term of a loan to finance both real property and tangible personal property shall have a maturity satisfactory to the corporation, but in no event shall the term exceed the maximum term applicable to a real property loan.

(b) Interest rate. The effective interest rate on any loan made by the corporation is variable for the term of the loan, as determined by the corporation, and includes a pro rata and proportionate share of all fees associated under the program.

(c) Amortization. Each loan shall be repaid over the term of the loan in a manner acceptable to the corporation and any third party, insurer, or guarantor of the loan.

(d) Equity participation. Unless otherwise approved by the board of directors of the corporation, no loan may be made by the corporation to an applicant if the applicant's required equity participation in the project is paid or to be paid with the proceeds of a third-party loan to be secured by a lien on the project.

(e) Rating Requirement. The bond, note or other obligation issued in respect to a loan must be rated at least "A" or its equivalent by a nationally recognized municipal bond rating service. A credit enhancement issued in support of such bonds, notes or other obligation, the result of which is that such bonds, notes or other obligations are rated at least "A" or its equivalent, shall satisfy the requirements of this subsection.

(f) Applications will require a \$500.00 application fee and may require a \$25,000.00 closing fee, payable to the Office of the Governor.

(g) Application for TID Project Loan--The application must:

(1) Be filed in the format provided and must contain all information and documentation required under the Act and this chapter, as applicable;

(2) Include all applicable attachments as specified in the application or as otherwise directed by the division;

(3) Contain the name, street address, mailing address, telephone number, fax number and electronic mail address for the authorized representative, if the applicant is a public entity, or for the authorized officer, if the applicant is a business;

(4) Include a signed statement certifying that the contents are true and correct to the best knowledge and belief of the public entity's authorized representative or the business's authorized officer;

(5) Include information regarding the public entity, including, but not limited to population, bond rating, bond history, any state or federal designations incorporating incentives, any local incentives, or participation in the project;

(6) Provide documentation that the applicant has authority to apply and participate in the program, such as:

(A) a certified copy of the public hearing notice, if applicable and required to satisfy the provisions of the Code; or

(B) a certified copy of the ordinance, order or resolution, as appropriate, with original signatures;

(7) Include a description of the project, not limited to:

(A) a tabular summary of the current number of jobs;

(B) the classification, titles and salary ranges of full-time, part-time and seasonal jobs to be created, retained and maintained at the qualified business site;

(C) projected capital investment;

(D) a summary of short and long term plans for expansion; and

(E) application of funds from the project request.

§179.6. Monitoring and Reporting Requirements

(a) Users will be required to meet reporting and compliance requirements as requested by the Bank, which may include but are not limited to:

(1) Annual submission of certified fiscal year end financial statements;

(2) Notification within 10 days of official legal action, which may include:

(A) a user name change;

(B) a sale or assumption of the project financed by the program.

(C) Notification of legal action must include a copy of the certificate of amendment to the articles of incorporation, and/or the d.b.a. statement under which the user operates, or other appropriate documentation filed with the Texas Secretary of State; and

(3) Immediate notification of any material adverse change to the user or the project.

(b) Projects may be subject to on-site monitoring visits, by the bank or representatives of the board of directors, with reasonable notice to the user.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502789

Tracye McDaniel

Executive Director

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 936-0181



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Texas Alcoholic Beverage Commission proposes amendments to §33.23 concerning the annual surcharges for all holders of permits and licenses issued by the commission as required by the Texas Alcoholic Beverage Code, §5.50(b), effective September 1, 1993. The section is amended by changing surcharges for all licenses and permits.

Jeannene Fox, Assistant Administrator, has determined, based upon an estimation of the number of licenses and permits the commission will issue within the fiscal year, that for state government the estimated revenue by the collection of surcharges for each of the first five years is \$19,400,720, with estimated additional cost being insignificant. There will be no fiscal implications for units of local government.

Jeannene Fox has determined the public benefit cost is that for each year of the first five years the regulated alcoholic beverage industry will bear the entire amount of the cost, including indirect administrative costs, of regulation by the Texas Alcoholic Beverage Commission. The effect on small businesses cannot be determined but is considered to be minimal and would not anticipate having a disproportionate impact on those in the alcoholic beverage industry. The anticipated economic cost to persons required to comply is the applicable surcharge.

Comments on the proposal may be submitted to Jeannene Fox, Assistant Administrator, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

The amendments are proposed under the Alcoholic Beverage Code, Subchapter B, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code and §5.50(b), which specifically mandates the surcharges and the General Appropriations Act, 79th Legislature, Article V, Alcoholic Beverage Commission.

Cross reference to statute: Alcoholic Beverage Code, §§11.32, 11.35, and 61.65.

§33.23. *Alcoholic Beverage License and Permit Surcharges.*

(a) A surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against [aH] license and permit holders as follows:

Figure: 16 TAC §33.23(a)

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

(d) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.

(e) This section shall take effect September 1, 2005[2002].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502765

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 206-3204



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1017

The Texas Education Agency (TEA) proposes new §61.1017, concerning optional flexible year programs for school districts. The proposed new section replaces an earlier version that was filed as proposed in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1215), which has been withdrawn. Like the earlier version, new §61.1017 would establish specifications for the administration of the Optional Flexible Year Program in accordance with Texas Education Code (TEC), §29.0821, as added by Senate Bill 346, 78th Texas Legislature, 2003. Additional language is proposed regarding the need for local board of trustee approval. Language requiring districts to obtain approval from the campus site-based decision-making committee is also proposed in response to comments received during the original publication period.

Senate Bill 346, 78th Texas Legislature, 2003, added TEC, §29.0821, authorizing the Optional Flexible Year Program. The Optional Flexible Year Program provides districts with flexibility in designing the instructional program for students who did not or are not likely to perform successfully on state assessments administered under TEC, §39.023, or who would not otherwise be promoted to the next grade level. The instructional calendar for students who fall into these risk categories must provide for no fewer than 180 days. Districts may request a reduction in the required days of attendance for students who do not fall into these risk categories in order to provide intensive instructional services to those students with greater educational needs. The instructional calendar for students who do not fall into these risk categories may be reduced, but not below 170 days. Districts who wish to use this option are required to seek prior approval from the commissioner to modify the instructional calendar.

The commissioner of education may adopt rules for the administration of the program. Like the earlier version, the proposed new 19 TAC §61.1017, Optional Flexible Year Program, would establish general provisions, define eligibility, specify program criteria,

describe the approval process, and delineate funding calculations. The new proposal includes additional language in subsection (d) regarding the required local board approval of the modified instructional calendar. In addition, new language has been included in subsection (d) requiring districts to obtain approval to waive staff development days from the campus site-based decision-making committee.

During the public comment period of the withdrawn proposal, a representative of the Texas Classroom Teachers Association (TCTA) noted that current state law requires the campus site-based decision-making committee to approve any staff development at a campus. TCTA believes that allowing the district to request a waiver of these days without the approval of the majority of teachers would circumvent the intent of current law. TCTA suggested that rule language be amended to require the approval of a majority of teacher employees who would be affected by the waiver request. The agency agrees in part and has incorporated this suggestion in subsection (d)(1) of the new proposal. Language in the TEC, §29.0821, does not address questions of approval to request the waiver within the district. However, given the statutory requirement that the campus site-based decision-making committee approve any staff development at a campus, the agency agrees that the committee should be involved in a decision to request a waiver. The agency does not concur that this requires a majority vote of the teacher employees involved, but rather the approval of the site-based decision-making committee. The agency has included additional language in the new proposal specifying the need for approval from the site-based decision-making committee before a waiver request is submitted to the TEA for approval.

Districts will be required to seek prior approval for the modification of their instructional calendar by submitting a written request to the TEA State Funding Division. No specific application form will be required. Districts should be prepared to provide evaluations or other evidence regarding the effectiveness of their approach, if requested.

Joe Wisnoski, deputy associate commissioner for school finance and fiscal analysis, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Wisnoski has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be providing districts with the flexibility to reduce instructional days for students who are performing satisfactorily and the opportunity to provide targeted instruction to students who have greater educational needs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §29.0821, which authorizes the commissioner of education to adopt rules for the administration of optional flexible year programs.

The new section implements the Texas Education Code, §29.0821.

§61.1017. Optional Flexible Year Program.

(a) General provisions. In accordance with Texas Education Code (TEC), §29.0821, a school district may modify their instructional calendar to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an Optional Flexible Year Program (OFYP) may reduce the number of instructional days for certain students.

(b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.

(1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under TEC, §39.023.

(2) The student is not eligible for promotion to the next grade level.

(c) Program criteria.

(1) A school district may reduce the number of instructional days during the regular school year for students who are not eligible for participation in this program to no fewer than 170 days.

(2) A school district must provide at least 180 days of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.

(3) A school district may request waivers for no more than five days of staff development or teacher preparation in order to provide additional days of instruction.

(4) A school district that provides transportation services must continue to provide these services during the OFYP.

(5) A school district that participates in the National School Lunch Program or the National School Breakfast Program must continue to provide these services during the OFYP.

(6) A school district may require educational support personnel to provide service as necessary for an OFYP.

(7) Each educator employed under a ten-month contract must provide the minimum days of service required under TEC, §21.401, notwithstanding the reduction in the number of instructional days or in the number of staff development days.

(d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.

(1) A school district must submit a letter to the Texas Education Agency division responsible for state funding describing the proposed modifications to the instructional calendar, including a description of the OFYP that will be provided under TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district is requesting a waiver of staff development days, the letter must also indicate that the request to waive staff development days has been approved by the campus site-based decision-making committee. The letter must be submitted no later than 90 days prior to the first day of the proposed instructional calendar in which the district is requesting to implement the OFYP.

(2) Approval to modify the number of instructional days is limited to one year. Extensions may be approved by submitting subsequent applications.

(3) No approval will be granted that reduces the number of instructional days to fewer than 170 days.

(4) The commissioner may require a school district to provide an evaluation that demonstrates the success of their approach as a condition of approval.

(e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance shall reflect the reduced number of days (no fewer than 170). For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance shall reflect the scheduled number of days (180 or more) in which instruction took place.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502816

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.65

The Texas Board of Architectural Examiners proposes an amendment to rule §1.65 for Title 22, Chapter 1, Subchapter D, pertaining to the procedure for registrants to renew registration annually. The amendment to this rule would permit registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The rule is amended to require each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The rule as amended explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S. mail. Currently, the rule requires the registrant's notice of his or her change of address to be written and signed and submitted to the agency within sixty days after the change of address. The amendments to the rule eliminate the required signature on the

change of address notice, shorten the deadline for registrants to provide the notice to the Board by thirty days, and allow the registrants' notice to be sent to the agency electronically.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for the first five-year period the section is in effect the public benefits expected as a result of the amendment to the rule are to provide greater opportunities and greater convenience for registrants to communicate with the agency and provide the agency a means to send the required renewal notice to registrants in a more efficient and less costly manner. There will be no additional impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The proposed amendment to this section does not affect any other statutes.

§1.65. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Architect ~~[at the Architect's current address of record]~~. An Architect must notify the Board in writing ~~(e-mail, fax, on the agency's Web site, or by U.S. mail)~~ each time the Architect's address of record changes, and the written notice of the Architect's change of address must be ~~[signed by the Architect and]~~ submitted to the Board within ~~thirty (30) days after [sixty (60) days of]~~ the effective date of the change of address. Upon request by an Architect, the Board shall send the annual registration renewal notice via e-mail. An Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) An Architect may renew his/her registration prior to its specified annual expiration date by:

(1) (No change.)

(2) providing the information or documentation requested by the annual registration renewal notice ~~[and signing the renewal form to verify the accuracy of all information and documentation provided]~~.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502784

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-8535

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SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.192

The Texas Board of Architectural Examiners proposes an amendment to rule §1.192 for Title 22, Chapter 1, Subchapter J, pertaining to architecture intern development program. The amendment to this rule is intended to reduce the period during which candidates must work in a full-time capacity in order to earn work credit toward successful completion of the internship. The current rule requires candidates to work no less than thirty-five hours per week for a period of no fewer than ten weeks. As amended, the rule would require candidates to work for a period of eight weeks.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for the first five-year period the section is in effect the public benefits expected as a result of the amendment to the rule are that candidates will have a greater opportunity to complete the internship requirements necessary to obtain architectural registration. The current ten-week period conflicts with the academic schedule of candidates who work between semesters. Also, the amendment conforms the rule to the standards of a national organization of architectural registration boards which will assist candidates seeking reciprocal registration. There will be no additional impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to §1051.705(a)(2) of Texas Occupations Code Annotated Chapter 1051, which requires the Board to prescribe the satisfactory experience working in an architectural office necessary to qualify to take the architectural registration examination.

The proposed amendment to this section does not affect any other statutes.

§1.192. Additional Criteria.

(a) - (b) (No change.)

(c) In order to earn credit for Training Units in any work setting other than a post-professional degree or teaching or research, an Applicant must:

(1) work at least thirty-five (35) hours per week for a minimum period of eight (8) [~~ten (10)~~] consecutive weeks; or

(2) (No change.)

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502785

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §3.65

The Texas Board of Architectural Examiners proposes an amendment to rule §3.65 for Title 22, Chapter 3, Subchapter D, pertaining to the procedure for registrants to renew registration annually. The amendment to this rule would permit registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The rule is amended to require each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The rule as amended explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S. mail. Currently, the rule requires the registrant's notice of his or her change of address to be written and signed and submitted to the agency within sixty days after the change of address. The amendments to the rule eliminate the required signature on the change of address notice, shorten the deadline for registrants to provide the notice to the Board by thirty days, and allow the registrants' notice to be sent to the agency electronically.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for the first five-year period the section is in effect the public benefits expected as a result of the amendment to the rule are to provide greater opportunities and greater convenience for registrants to communicate with the agency and provide the agency a means to send the required renewal notice to registrants in a more efficient and less costly manner. There will be no additional impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The proposed amendment to this section does not affect any other statutes.

§3.65. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Landscape Architect ~~[at the Landscape Architect's current address of record]~~. A Landscape Architect must notify the Board in writing ~~(e-mail, fax, on the agency's Web site, or by U.S. mail)~~ each time the Landscape Architect's address of record changes, and the written notice of the Landscape Architect's change of address must be ~~[signed by the Landscape Architect and]~~ submitted to the Board within thirty (30) days after [sixty (60) days of] the effective date of the change of address. Upon request by a Landscape Architect, the Board shall send the annual registration renewal notice via e-mail. A Landscape Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Landscape Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) A Landscape Architect may renew his/her registration prior to its specified annual expiration date by:

(1) (No change.)

(2) providing the information and documentation requested by the annual registration renewal notice ~~[and signing the renewal form to verify the accuracy of all information and documentation provided]~~.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502786

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-8535



CHAPTER 5. INTERIOR DESIGNERS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.75

The Texas Board of Architectural Examiners proposes an amendment to rule §5.75 for Title 22, Chapter 5, Subchapter D, pertaining to the procedure for registrants to renew registration annually. The amendment to this rule would permit registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The rule is amended to require each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The rule as amended explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S.

mail. Currently, the rule requires the registrant's notice of his or her change of address to be written and signed and submitted to the agency within sixty days after the change of address. The amendments to the rule eliminate the required signature on the change of address notice, shorten the deadline for registrants to provide the notice to the Board by thirty days, and allow the registrants' notice to be sent to the agency electronically.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for the first five-year period the section is in effect the public benefits expected as a result of the amendment to the rule are to provide greater opportunities and greater convenience for registrants to communicate with the agency and provide the agency a means to send the required renewal notice to registrants in a more efficient and less costly manner. There will be no additional impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The proposed amendment to this section does not affect any other statutes.

§5.75. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Interior Designer ~~[at the Interior Designer's current address of record]~~. An Interior Designer must notify the Board in writing ~~(e-mail, fax, on the agency's Web site, or by U.S. mail)~~ each time the Interior Designer's address of record changes, and the written notice of the Interior Designer's change of address must be ~~[signed by the Interior Designer and]~~ submitted to the Board within thirty (30) days after [sixty (60) days of] the effective date of the change of address. Upon request by an Interior Designer, the Board shall send the annual registration renewal notice via e-mail. An Interior Designer who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Interior Designer's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) An Interior Designer may renew his/her registration prior to its specified annual expiration date by:

(1) (No change.)

(2) providing the information or documentation requested by the annual registration renewal notice ~~[and signing the renewal form to verify the accuracy of all information and documentation provided]~~.

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502787

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: August 21, 2005
For further information, please call: (512) 305-8535



CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners proposes an amendment to rule §7.10 for Title 22, Chapter 7, pertaining to fees charged by the agency. The amendment to this rule would increase fees charged to candidates and registrants for examinations, renewal of registration and reinstatement of registration. The increase in the charge for the architectural registration examination, the landscape architectural registration examination, and the examination for registration as an interior designer reflect increases in the charge made by the examination providers. The amendment would increase the renewal for active resident registration and reinstatement of resident registration by \$10. The fee for non-resident active renewal and reinstatement would increase by \$20. The fee for renewal of an inactive registration by resident and non-resident registrants would increase by \$25. The increases in the fees are reflected in the penalties for renewing a delinquent registration which are imposed by statute. Thus, the penalty for a delinquent renewal for an active registrant would increase by \$15, if delinquent by 90 or fewer days, and would increase by \$20, if delinquent by more than 90 days but less than one year. The same fifty percent incremental penalty also applies to delinquent renewals of inactive registration.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the sections. The estimated increase in revenue to the agency is \$200,000 per year. No other fiscal impact to state government is anticipated.

Ms. Hendricks has also determined that for the first five-year period the amendments to the section are in effect the public benefits expected as a result of the amendment to the rule are provide revenue to the agency necessary to cover the cost of agency operations. In addition, the fee increases for the examinations will accurately reflect the actual charges imposed by the examination providers. There will be no additional impact on small business. There will be an increase in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to §§1051.651, 1052.054, and 1053.052 of Texas Occupations Code Annotated Chapters 1051, 1052, and 103, respectively, which requires the board to set fees reasonable and necessary to cover the costs of administering those chapters.

The proposed amendment to this section does not affect any other statutes.

§7.10. Fees--General.

(a) (No change.)

(b) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:

Figure: 22 TAC §7.10(b)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502788

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-8535



PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 623. REGISTRATION AND CERTIFICATION

22 TAC §623.8

The Board of Tax Professional Examiners proposes an amendment to §623.8, Qualifications for Certification as Registered Professional Appraiser (RPA). This amendment implements the ethics course requirement and modifies the course requirement for Class II-appraiser.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on small businesses.

The probable economic cost to persons required to comply with the amendment will be \$200 incurred during first year registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated in the area of ethics, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§623.8. Qualifications for Certification as Registered Professional Appraiser (RPA).

(a) The person accepted and registered in the field of appraisal will be initially designated as Class I-appraiser, and must qualify for Class II-appraiser at a date no later than one year after the date of registration. To qualify for Class II-appraiser the registrant must:

(1) complete one year of experience in appraising for property tax purposes;

(2) pass an education course approved by the board in the Texas property tax system; ~~and pass an education course approved by the board in introduction to appraisal.~~

(3) effective January 1, 2006 pass an education course approved by the board in Ethics.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502818

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300



22 TAC §623.9

The Board of Tax Professional Examiners proposes an amendment to §623.9, Qualifications for Certifications as Registered Texas Assessor/Collector (RTA). This amendment implements the ethics course requirement and modifies the course requirement for Class II-assessor/collector.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five-year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on small businesses.

The probable economic cost to persons required to comply with the amendment will be \$200 incurred during first year registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit

is the assurance that all tax professionals will be better educated in the area of ethics, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§623.9. Qualifications for Certifications as Registered Texas Assessor/Collector (RTA).

(a) The person accepted and registered in the field of assessing/collecting will be initially designated as Class I-assessor/collector, and must qualify for Class II-assessor/collector at a date no later than one year after the date of registration. To qualify for Class II-assessor/collector, the registrant must:

(1) complete one year of experience in assessing/collecting;

(2) pass an education course approved by the board in the Texas property tax system; ~~and [and pass an education course approved by the board in introduction to appraisal.]~~

(3) effective January 1, 2006, pass an education course approved by the board in Ethics.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300



22 TAC §623.10

The Board of Tax Professional Examiners proposes an amendment to §623.10, Qualifications for Certifications as Registered Texas Collector (RTC). This amendment implements the ethics course requirement and modifies the course requirement for Class II-collector.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section

will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on small businesses.

The probable economic cost to persons required to comply with the amendment will be \$200 incurred during first year registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated in the area of ethics, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§623.10. Qualifications for Certifications as Registered Texas Collector (RTC).

(a) The person who is accepted and registered in the field of collected will be initially designated as Class I-collector, and must qualify for Class II-collector at a date no later than one year after the date of registration. To qualify for Class II-collector, the registrant must:

(1) complete one year of experience in collecting property taxes;

(2) pass an education course approved by the board in the Texas property tax system; and ~~[and pass an education course approved by the board in introduction to appraisal.]~~

(3) effective January 1, 2006, pass an education course approved by the board in Ethics.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502820

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300

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22 TAC §623.12

The Board of Tax Professional Examiners proposes an amendment to §623.12, Recertification. This amendment implements the USAP and ethics requirement for recertification for all certified property tax professionals.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on small businesses.

The probable economic cost to persons required to comply with the amendment will be \$400 incurred during the five year recertification period for every certified property tax professional registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated in the area of USPAP and ethics, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§623.12. Recertification.

(a) Certification as a registered professional appraiser (RPA) or as a registered Texas assessor/collector (RTA) or registered Texas Collector (RTC) must be renewed on the fifth anniversary date of certification and on each fifth anniversary of recertification so long as the registrant is employed under conditions which require registration with the board. To be recertified as an RPA or an RTA or an RTC the registrant must:

(1) be active in the field of appraising or assessing/collecting or collecting , and renew registration annually with the board for a period of five years (or periods totaling five years) from the date of certification or the date of the last recertification; and

(2) RPA ~~[or RTA]~~ be awarded not less than 75 continuing education units (CEUs) during that five-year period, including completion of ethics and USPAP required training which shall be a portion of the 75 continuing education units (CEUs). RTA be awarded not less than 75 continuing education units (CEUs) during that five-year period, including completion of ethics required training which shall be a portion of the 75 continuing education units (CEUs). RTC be awarded not less than 25 continuing education units (CEUs) during that five-year period, including completion of ethics required training which shall be a portion of the 25 continuing education units (CEUs).

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502821

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300



22 TAC §623.17

The Board of Tax Professional Examiners proposes new Board rule §623.17, Training of Chief Appraisers. This proposed new rule would implement the USPAP requirement for all registered professional appraisers.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which the proposed new rule is in effect, the rule will not have an adverse economic effect on small businesses because the new rule imposes no additional burden on small businesses.

The probable economic cost to persons required to comply with the new rule will be \$200 incurred upon initial certification as a registered professional appraiser registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed new rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated in the area of USPAP, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposed new rule may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The new rule is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed new rule.

§ 623.17. Training for Chief Appraisers.

(a) House Bill 2382, 79th Legislature, Regular Session, 2005, requires the board to implement not later than January 1, 2006 a training program for newly appointed chief appraisers.

(b) The chief appraiser training program will provide the appointee with information regarding:

(1) Property Taxation Professional Certification Act;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to ethical behavior;

(5) the role and functions of the chief appraiser, the appraisal district board of directors, and the appraisal review board;

(6) the importance of maintaining the independence of an appraisal office from political pressure;

(7) the importance of prompt and courteous treatment of the public;

(8) the finance and budgeting requirements for an appraisal district, including appropriate controls to ensure that expenditures are proper; and

(9) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code;

(D) other laws relating to public officials, including conflict-of-interest laws; and

(E) the standards of ethics imposed by the Uniform Standards of Professional Appraisal Practice.

(c) The training program may only be provided by a provider approved by the board.

(d) Section 3(b) and (c), House Bill 2382, 79th Legislature, Regular Session, 2005, provide, respectively (1) that a person is not required to complete the training program for newly appointed chief appraisers to serve as a chief appraiser for an appraisal district until July 1, 2006 and (2) that the change in law made by the enactment of Section 5.042, Tax Code prohibiting a person from serving as chief appraiser unless the person has completed the training program for newly appointed chief appraisers applies only to a chief appraiser appointed on or after July 1, 2006.

(e) A person may serve in a temporary, provisional, or interim capacity as chief appraiser for a period of up to one year without completing the training required by this section.

(f) This training is not required for a county assessor-collector who serves as chief appraiser under Section 6.05(c) of the Tax Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502822

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300



22 TAC §623.18

The Board of Tax Professional Examiners proposes new Board rule §623.18, USPAP Training for all Registered Professional Appraisers. This proposed new rule would implement the USPAP requirement for all registered professional appraisers.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which the proposed new rule is in effect, the rule will not have any adverse economic effect on small businesses because the new rule imposes no additional burden on small businesses.

The probable economic cost to persons required to comply with the proposed new rule will be \$200 incurred upon initial certification as a registered professional appraiser registered with the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed new rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated in the area of USPAP, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposed new rule may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The new rule is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed new rule.

§623.18. USPAP Training for All Registered Professional Appraisers.

(a) Effective January 1, 2006, all registered professional appraisers must complete the required USPAP training as provided in subsection (b) of this section within the calendar year following the year of their initial designation as registered professional appraisers.

(b) The required USPAP training program will provide information regarding the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the appraisal standards board of the appraisal foundation.

(c) The training program may only be provided by a provider approved by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502823

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 305-7300



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

The Texas Parks and Wildlife Department (the department) proposes new §§51.601, 51.606 - 51.611, 51.621 - 51.624, 51.631, 51.632, 51.641 - 51.643, 51.651, 51.652, 51.661, 51.662, and 51.671 - 51.674, concerning advisory committees.

The proposed new sections are necessary to implement the requirements of Government Code, Chapter 2110, and Parks and Wildlife Code, §11.0162. The Texas Parks and Wildlife Code authorizes the Chairman of the Texas Parks and Wildlife Commission (the commission) to appoint advisory committees and to "adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section." Tex. Parks & Wild. Code §11.0162. An advisory committee is a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Tex. Gov't Code §2110.001.

For a number of years, the department has sought advice from interested persons and groups about the functions of the departments. Such input is important as the commission and the department carry out the agency's mission. The formation of advisory committees is an efficient and effective method of obtaining necessary and useful input. The proposed rules are intended to ensure compliance with Government Code, Chapter 2110, and to formalize the structure of department advisory groups. The department does not reimburse advisory committee members for their expenses or otherwise compensate advisory committee members.

There are two types of advisory committees used by the department, those advisory committees that advise the chairman and commission on matters of interest, and those advisory committees that advise the department on a day-to-day basis. Proposed new §§51.601, 51.612 - 51.617, 51.621 - 51.625, 51.631, 51.632, 51.641 - 51.643, 51.651, 51.652, and 51.661 are rules governing the committees advising the department, and proposed new §§51.671 - 51.674 are rules governing the committees advising the chairman and the commission.

Under Government Code, Chapter 2110, unless otherwise provided by specific statute, for each official advisory committee, a state agency must adopt rules that (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Tex. Gov't Code §§2110.005, 2110.008. Government Code, Chapter 2110, also requires that the state agency advised by the advisory committee annually evaluate each advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Tex. Gov't Code §2110.006.

The membership of a state agency advisory committee is also addressed by Government Code. An advisory committee must be composed of a reasonable number of members, not to exceed

24. Unless otherwise provided by specific statute, the composition of the advisory committee must provide a balanced representation between: (1) industries or occupations regulated or directly affected by the state agency and; (2) consumers of services provided by the state agency or by the industries or occupations regulated by the state agency. Tex. Gov't Code §2110.002.

Unless otherwise provided by statute, an advisory committee will continue its existence after the date established for the committee's abolishment only through amendment to the agency's rules regarding the advisory committee. If a date for abolishment is not set by rule or by statute, the advisory committee will be abolished on the fourth anniversary of the date of its creation, or September 1, 2005. Tex. Gov't Code §2110.008. An advisory committee that state or federal law has specifically created is considered to have been created on the effective date of that law unless the law specifically provides for a different date of creation. Tex. Gov't Code §2110.007.

Effective September 1, 2005, all department advisory groups appointed by the chairman of the commission (the chairman) will be abolished. Likewise, the terms of all current advisory group or task force members appointed by the chairman will expire on September 1, 2005. After the effective date of the proposed rules, the chairman may appoint members to the advisory committees established by these rules.

Because the San Jacinto Advisory Board and the Operation Game Thief Committee are established by statute and members are appointed by the governor and the executive director, respectively, these committees and their members' terms will not expire on September 1, 2005. Similarly, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory Committee are also established by statute, although the members of these two committees are appointed by the chairman. Therefore, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory will not expire on September 1, 2005, but the terms of their members will expire September 1, 2005. The San Jacinto Advisory Board, the Operation Game Thief Committee, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory Committee are all addressed in the proposed rules.

Proposed new §51.601, concerning General Requirements, establishes the general requirements for department advisory committees. Unless otherwise provided, the general requirements would apply to all department advisory committees established by rule. In addition, the proposed rules provide specific requirements for each department advisory committee, including membership, terms and other requirements.

The San Jacinto Advisory Board, the Texas Statewide Trails Advisory Committee, the Game Warden Advisory Committee and the Operation Game Thief Advisory Committee are required by statute. The proposed new rules regarding these statutorily mandated advisory committees are intended to merely track the requirements of the statutes establishing or requiring those committees.

The proposed new rules would establish six advisory committees involving wildlife issues. The White-tailed Deer Advisory Committee, as addressed in proposed new §51.606, will advise the department on issues relevant to white-tailed deer and all programs involving white-tailed deer management in Texas. The Game Bird Advisory Board, as addressed in proposed new §51.607, will advise the department regarding the management,

research, and habitat acquisition needs of game birds and migratory game birds, the development and implementation of game bird and migratory game bird regulations, research, and management, and education and communications with various constituent groups and individuals interested in game birds and migratory game birds. The Texas Quail Council, as addressed in proposed new §51.608, will advise the department on matters pertaining to the implementation of the Texas Quail Conservation Initiative, including recommendations on matters pertaining to the regulation, management, research, and funding needs with respect to the four species of quail that occur in Texas. The Private Lands Advisory Board, as addressed in proposed new §51.609, will advise the department on matters pertaining to wildlife programs, management, and research on private lands in Texas. The Bighorn Sheep Advisory Committee, as addressed in proposed new §51.610, will advise the department on problems, alternatives, solutions and goals regarding the restoration of desert bighorn sheep to Texas. The Wildlife Diversity Advisory Committee, as addressed in proposed new §51.611, will advise the department on management, research and outreach activities related to nongame and rare species in the State of Texas.

The proposed new rules would establish five advisory committees involving coastal fisheries issues. The Artificial Reef Advisory Committee, as described in proposed new §51.621, will advise the department regarding the Artificial Reef Program. The Blue Crab Advisory Committee, as addressed in proposed new §51.622, will advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the department's Blue Crab Management Plan. The Oyster Advisory Committee, as addressed in proposed new §51.623, will advise the department regarding preparation and formulation of rules and regulations necessary to carry out the department's Oyster Management Plan. The Shrimp Advisory Committee, as addressed in proposed new §51.624, will advise the department regarding preparation and formulation of rules and regulations necessary to carry out the department's Shrimp Management Plan.

The proposed new rules would establish two advisory committees involving freshwater fisheries issues. The Freshwater Fisheries Advisory Board, as addressed in proposed new §51.631, will advise the department regarding all matters pertaining to freshwater fisheries management and research in the State of Texas. The Texas Rivers Conservation Advisory Committee, as addressed in proposed new §51.632, will advise the department regarding the needs of natural riverine resources while providing abundant recreational opportunities for the public.

The proposed new rules would establish three advisory committees involving state parks issues, two of which are statutorily required. The Texas Statewide Trails Advisory Board, as addressed in proposed new §51.641, in compliance with United States Code, Title 23, §206, will advise the department regarding distribution of federal National Recreational Trail Funds to state and local sponsors of trail projects and will assist in the development of educational materials to inform the public about trail opportunities. The San Jacinto Historical Advisory Board, as addressed in proposed new §51.642, pursuant to Texas Parks and Wildlife Code, Chapter 22, Subchapter B, will review the policies and operations of the San Jacinto Battleground and will advise the department on the proper historical development of the battleground. The Historic Sites Advisory Committee, as addressed in proposed new §51.643, will advise the department regarding issues related to the state historic sites and provide a mechanism

for department staff and interested parties to exchange information and address the needs of state historic sites.

The proposed new rules would establish two advisory committees involving law enforcement issues, both of which are statutorily required. The Operation Game Thief Committee, as addressed in proposed new §51.651 pursuant to Parks and Wildlife Code, §12.202, will administer the operation game thief funds and make reward payments and death benefit payments from that fund. The Game Warden Academy Advisory Committee, as addressed in proposed new §51.652, pursuant to Texas Occupations Code, §1701.252, will develop a curriculum for the Game Warden Academy.

The proposed new rules would establish two advisory committee involving communications issues. An Expo Advisory Committee, as addressed in proposed new §51.661, will be appointed each year and will advise the department regarding the planning and operation of the Texas Parks and Wildlife Expo, an event to encourage and increase participation in hunting, fishing, and outdoor recreation and build awareness and support for the conservation of natural, cultural and historic resources. An Outreach, Interpretation, and Education Advisory Committee, as addressed in proposed new §51.662, will be appointed each year and will advise the department regarding efforts to educate and encourage Texans to experience, learn, and take an active role in conserving natural and cultural resources.

The proposed new rules would establish four advisory committees to advise the chairman and the commission on a variety of issues. A State Parks Advisory, as addressed in proposed new §51.671, will be appointed to advise the chairman and commission regarding state parks. A Coastal Resources Advisory Committee, as addressed in proposed new §51.672, will be appointed to advise the chairman and commission regarding issues that cross fishery and geographic boundaries on the coast of Texas. A Land Resources Advisory Committee, as addressed in proposed new §51.673, will be appointed to advise the chairman and commission regarding land resources. An Aquatic Resources Advisory Committee, as addressed in proposed new §51.674, will be appointed to advise the chairman and commission regarding aquatic resources.

The following groups are expressly exempt from the requirements of Government Code, Chapter 2110, and are therefore not included in these rules: the Finfish License Management Review Board, established in Parks and Wildlife Code, §47.073(f); the Shrimp License Management Review Board, established in Parks and Wildlife Code, §77.118 (f); and the Crab License Management Review Board, established in Parks and Wildlife Code, §78.103 (f).

Ann Bright, General Counsel, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules beyond those currently existing.

Ms. Bright has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be to ensure proper management and effective use of department advisory committees.

The proposed new rules will result in no adverse economic effects to small or micro businesses.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

DIVISION 1. GENERAL REQUIREMENTS

31 TAC §51.601

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.601. General Requirements.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Advisory committee--a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising the department.

(2) Chairman--the chairman of the Texas Parks and Wildlife Commission.

(3) Commission --the Texas Parks and Wildlife Commission.

(4) Department--the Texas Parks and Wildlife Department.

(5) Director--the Executive Director of the Texas Parks and Wildlife Department.

(b) Creation. The Chairman may appoint advisory committees to advise the commission on issues within the jurisdiction of the department or the commission.

(c) Function. Unless otherwise provided by law, an advisory committee will address only those matters about which advice is sought. An advisory committee will have no authority to establish agency policy.

(d) Expiration of advisory committee. Unless expressly provided in this subchapter or other law, each department advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the date on which the rule establishing the advisory committee is effective.

(e) Membership. The chairman may, in his or her sole discretion, appoint individuals to serve on an advisory committee. Membership in an advisory committee will not exceed 24 (excluding ex officio members). Unless otherwise provided by specific statute, membership of each advisory committee shall be balanced to ensure representation of industries or occupations regulated or directly affected by the department and consumers of services provided by the department or by the industries or occupations regulated by the department to which the

advisory committee relates. Each advisory committee shall include at least one department employee as an ex officio member. Members may be subject to removal and/or replacement at the discretion of the Chairman.

(f) Term of members. Unless expressly provided in this subchapter or other law, each member to an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman. The terms of members appointed prior to September 1, 2005, expire on September 1, 2005.

(g) Presiding officer. The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.

(h) Subcommittees. The chairman may also appoint one or more subcommittees of an advisory committee, so long as the membership of the advisory committee, including any subcommittees does not exceed 24.

(i) Meetings. Each committee shall meet at least once a year, but may meet as often as necessary. The department ex officio member of the each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.

(j) Reports. On or before October 1 of each year of its existence, each advisory committee shall submit a report to the department. Upon receipt of the report, the department shall evaluate the advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Each report shall include the following:

(1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 30);

(2) a summary of recommendations from the advisory committee; and

(3) other information determined by the advisory committee or the Chairman to be appropriate and useful.

(k) Expenses. Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(l) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

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DIVISION 2. WILDLIFE

31 TAC §§51.606 - 51.611

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.606. White-tailed Deer Advisory Committee (WTDAC).

(a) The WTDAC is created to advise the department on issues relevant to white-tailed deer and all programs involving white-tailed deer management in Texas, including problems, options, goals and planning regarding white-tailed deer.

(b) The WTDAC consists of no more than 24 members. The composition of the White-tailed Deer Advisory Committee shall represent, at a minimum:

(1) the ecological range of white-tailed deer in Texas;

(2) landowners;

(3) conservation and management organizations; and

(4) hunters.

(c) The WTDAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.607. Game Bird Advisory Board (GBAB).

(a) The GBAB is created to advise the department regarding the following :

(1) the management, research and habitat acquisition needs of game birds and migratory game birds.

(2) development and implementation of game bird and migratory game bird regulations, research, and management.

(3) education and communications with various constituent groups and individuals interested in game birds and migratory game birds.

(b) The GBAB consists of 10 members selected from members of the general public with an interest in game bird and migratory game bird management.

(c) The GBAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.608. Texas Quail Council (TQC).

(a) The TQC is created to advise the department on matters pertaining to the implementation of the Texas Quail Conservation Initiative, including the following:

(1) regulation, management, research, and funding needs regarding the four species of quail that occur in Texas and

(2) management, research and habitat acquisition needs of game birds and migratory game birds.

(3) education and communications with various constituent groups and individuals interested in the quail species of Texas.

(b) The TQC consists of no more than 24 members. The composition of the Texas Quail Council shall represent:

(1) the ecological range of quail species in Texas;

- (2) landowners;
- (3) conservation organizations;
- (4) representatives of appropriate state and federal agencies; and
- (5) quail hunters.

(c) The TQC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.609. Private Lands Advisory Board (PLAB).

(a) The PLAB is created to advise the department on all matters pertaining to wildlife programs, management, and research on private lands in Texas, including the following:

- (1) the development of an ecosystem approach to management of habitats;
- (2) financing options for private lands programs;
- (3) development and dissemination of information regarding management and research of wildlife habitat and ecosystems; and
- (4) any other matters at the request of the chairman.

(b) The PLAB shall be composed of not fewer than 5 or more than 24 members representing private landowners from the various ecological regions of the state.

(c) The PLAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.610. Bighorn Sheep Advisory Committee (BSAC).

(a) The BSAC is created to advise the department about problems, alternatives, solutions, and goals regarding the restoration of desert bighorn sheep to Texas.

(b) The BSAC consists of no more than 24 members. The composition of the BSAC will be comprised of the following:

- (1) at least two members of the Texas Bighorn Society;
- (2) at least two persons who own land in the historic range of desert bighorn sheep;
- (3) university faculty and staff as necessary and appropriate; and
- (4) representatives of government agencies as necessary and appropriate.

(c) The BSAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.611. Wildlife Diversity Advisory Committee (WDAC).

(a) The WDAC shall advise the department on matters pertaining to management, research, and outreach activities related to nongame and rare species in the State of Texas, including the following:

- (1) development and implementation of the wildlife diversity related projects, grants, and policy;
- (2) wildlife diversity conservation and regulations;
- (3) education and communications with various constituent groups and individuals interested in wildlife diversity in the state of Texas.

(b) The WDAC consists of no more than 20 members representing landowner and conservation organizations in Texas.

(c) The WDAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. COASTAL FISHERIES

31 TAC §§51.621 - 51.624

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.621. Artificial Reef Advisory Committee (ARAC).

(a) The ARAC is created to advise the department regarding the ongoing Artificial Reef Program.

(b) The ARAC shall consist of no more than 10 members of the public who have an interest in the artificial reef program.

(c) The ARAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.622. Blue Crab Advisory Committee (BCAC).

(a) The BCAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Blue Crab Management Plan.

(b) The BCAC shall consist of no more than 10 members of the public who have an interest in the blue crab management program.

(c) The BCAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.623. Oyster Advisory Committee (OAC).

(a) The OAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Oyster Management Plan.

(b) The OAC shall consist of no more than 10 members of the public who have an interest in the oyster program.

(c) The OAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.624. Shrimp Advisory Committee (SAC).

(a) The SAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Shrimp Management Plan.

(b) The SAC shall consist of no more than 15 members of the public who have an interest in shrimp issues.

(c) The SAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

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DIVISION 4. INLAND FISHERIES

31 TAC §51.631, §51.632

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.631. Freshwater Fisheries Advisory Board (FFAB).

(a) The FFAB is created for the purpose of advising the department regarding all matters pertaining to freshwater fisheries management and research in the state. The Board shall also advise the department regarding the following:

- (1) the development and implementation of freshwater fisheries management programs throughout the state;
- (2) the development of management and research priorities;
- (3) the development of priorities for expenditures of angler financed programs; and
- (4) the dissemination of information regarding freshwater fisheries management and research.

(b) The FFAB shall consist of at least 6, but not more than 24 individuals representing the state's freshwater angling public, the aquaculture industry, the freshwater fishing industry, fisheries educators, and conservation groups. Each member shall serve two-year or four-year terms as designated by the chairman, and terms may be staggered to ensure continuity.

(c) The FFAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.632. Texas Rivers Conservation Advisory Board (TRCAB).

(a) The TRCAB is created to advise the department regarding the needs of natural riverine resources while providing abundant recreational opportunities for the public. The advisory committee's responsibilities include the following:

- (1) serving as a sounding group for the public's interest;
- (2) assisting department staff in evaluating aquatic conservation program strengths, weaknesses, and needs; and
- (3) providing advice and guidance to the department concerning program goals and objectives.

(b) The TRCAB shall consist of 16 members, which shall include the following:

- (1) three private landowner representatives;
- (2) six natural resource conservation organizations;
- (3) four recreation representatives;
- (4) one retail business; and

(5) two state/federal agency representatives.

(c) The TRCAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

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DIVISION 5. STATE PARKS

31 TAC §§51.641 - 51.643

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.641. Texas Statewide Trails Advisory Board (TSTAB).

(a) The TSTAB is created in compliance with United States Code, Title 23, §206, to advise the department regarding the distribution of federal National Recreational Trail Funds to state and local sponsors of trail projects and to assist in the development of educational materials to inform the public about trail opportunities.

(b) The TSTAB shall consist of 10 members, which shall include representatives with a diverse range of trail-related interests, which may include pedestrian activities, including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow-trail activities; bicycling or use of other human-powered vehicles; aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(c) So long as the department receives federal National Recreational Trail Funds, the TSTAB shall continue unless otherwise abolished by statute.

(d) Unless otherwise required by law, the TSTAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.642. San Jacinto Historical Advisory Board (SJHAB).

(a) The SJHAB is created pursuant to Texas Parks and Wildlife Code, Chapter 22, Subchapter B, to review the policies and operations of the San Jacinto Battleground and to advise the department on the proper historical development of the battleground.

(b) The SJHAB shall consist of five members, which shall include the chairman of the Battleship Texas Commission, the president of the San Jacinto Museum of History Association, and, three members of the public. The public members are appointed by the governor for staggered six-year terms expiring in odd-numbered years. One or more of the public members may be selected from the San Jacinto Chapter of the Daughters of the Republic of Texas.

(c) The SJHAB shall continue until abolished by statute.

(d) The SJHAB shall meet quarterly.

(e) Unless otherwise required by Texas Parks and Wildlife Code, Chapter 22, Subchapter B, the SJHAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.643. Historic Sites Advisory Committee (HSAC).

(a) The HSAC is created to advise the department regarding the issues related to state historic sites and the needs of the state historic sites.

(b) The HSAC shall consist of up to 11 members who shall include professionals in the following fields: historic sites education, museums management, historic architecture, history, archeology, and related disciplines.

(c) The HSAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

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DIVISION 6. LAW ENFORCEMENT

31 TAC §51.651, §51.652

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.651. Operation Game Thief Committee (OGTC).

(a) The OGTC is created pursuant to Parks and Wildlife Code, §12.202, for the purpose of administering the operation game thief funds and to make reward payments and death benefit payments from that fund.

(b) The OGTC shall consist of 11 members appointed by the director in accordance with Parks and Wildlife Code, §12.202. Members shall serve staggered terms of six years, expiring on January 31 of each odd-numbered year. The director shall appoint the chairman of the OGTC. The director or a department employee designated by the director shall serve as secretary to the OGTC.

(c) The OGTC shall continue until abolished by statute.

(d) Unless otherwise provided by Parks and Wildlife Code, §12.202, the OGTC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.652. Game Warden Academy Advisory Committee (GWAAC).

(a) The GWAAC is created pursuant to Occupations Code, §1701.252 for the purpose of developing a curriculum for the Game Warden Academy.

(b) The GWAAC shall consist of no more than 24 members. At least one third of the members of the Game Warden Academy Advisory Committee shall be public members that meet the qualifications

required of a public member of the Texas Commission on Law Enforcement Office Standards and Education under Occupations Code, §1701.052.

(c) The GWAAC shall continue until abolished by statute.

(d) Unless otherwise provided by this section or by Occupations Code, §1701.252, or the rules of Texas Commission on Law Enforcement Office Standards and Education, including 37 TAC §215.7, the GWAAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

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DIVISION 7. COMMUNICATIONS

31 TAC §51.661, §51.662

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.661. Expo Advisory Committee (EAC).

(a) The EAC shall be appointed each year to advise the department regarding the planning and operation of the Texas Parks and Wildlife Expo, an event to encourage and increase participation in hunting, fishing and outdoor recreation and build awareness and support for the conservation of natural, cultural and historic resources.

(b) The EAC shall consist of no more than 24 members, which shall include representatives from the sporting goods industry, organized youth groups, marketing organizations, and conservation organizations. Each member shall serve until November 30th of the calendar year in which the member is appointed.

(c) The EAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.662. Outreach, Interpretation, and Education Advisory Committee (OIEAC).

(a) The OIEAC is appointed to advise the department regarding efforts to educate and encourage Texans to experience, learn, and take an active role in conserving Texas' natural and cultural resources.

(b) The OIEAC shall consist of no more than 24 members.

(c) The OIEAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 8. COMMITTEES OF THE COMMISSION

31 TAC §§51.671 - 51.674

The new rules are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed new rules affect Parks and Wildlife Code, §11.0162.

§51.671. State Parks Advisory Committee (SPAC).

(a) The SPAC is appointed to advise the chairman and the commission regarding state parks.

(b) The SPAC shall consist of no more than 24 members.

(c) The SPAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.672. Coastal Resources Advisory Committee (CRAC).

(a) The CRAC is created to advise the chairman and the commission on issues that cross fishery and geographic boundaries on the coast of Texas.

(b) The CRAC shall consist of no more than 10 members composed of members in the public who have an interest in coastal resources issues.

(c) The CRAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.673. Land Resources Advisory Committee (LRAC).

(a) The LRAC is appointed to advise the chairman and the commission on issues affecting land resources.

(b) The LRAC shall consist of no more than 24 members.

(c) The LRAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.674. Aquatic Resources Advisory Committee (ARAC).

(a) The ARAC is appointed to advise the chairman and the commission regarding aquatic resources.

(b) The ARAC shall consist of no more than 24 members.

(c) The ARAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department (the department) proposes amendments to §§53.3, 53.5, and 53.60, concerning stamps, stamp fees, and license and fee exemptions.

The proposed amendments are necessary to implement the requirements of Senate Bill 1192 and House Bill 1076, as enacted by the 79th Texas Legislature.

Senate Bill 1192 reorganized the department's game bird stamps, creating two new stamps from the current three. The white-winged dove stamp (\$7) and waterfowl stamp (\$7) are combined to create a single migratory game bird stamp. The fee for the stamp is \$7. The stamp is required for the hunting of any migratory game bird (ducks, geese, teal, doves, coots, rails, gallinules, and sandhill cranes). The turkey stamp is eliminated and replaced by an upland game bird stamp (\$7), which is required for the hunting of any non-migratory game bird (turkey, quail, pheasant, chachalaca, and prairie chicken). The legislation took effect June 20, meaning the stamp reorganization will be effective for the 2005-2006 hunting season, which begins September 1, 2005.

House Bill 1076 requires the department to waive the fees for hunting and fishing licenses for a Texas resident on active duty as a member of the United States armed forces. In keeping with the waiver of license fees mandated by the legislature, the department also believes that it is appropriate to waive stamp fees for Texas residents on active duty in the United States armed forces.

The proposed amendment to §53.3, concerning Combination Hunting and Fishing License Packages, would comport current language to reflect the creation of the new stamps and the elimination of the repealed stamps, and would add a new Texas resident active duty military super-combination hunting and "all water" fishing package to the list of licenses available from the department. The amendment is necessary to adjust the composition of the department's combination-license packages to reflect the creation of the new stamps and the elimination of existing stamps and to implement the provisions of Senate Bill 1192 and House Bill 1076, enacted by the 79th Texas Legislature.

The proposed amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, would establish by rule the fees associated with the new stamps and eliminate references and fees for stamps that no longer exist as a result of legislative action. The amendment also eliminates a reference to the bonus deer tag, which no longer exists. The amendment is necessary to implement the provisions of Senate Bill 1192.

The proposed amendment to §53.60, concerning Stamps, would revise the list of stamps to reflect the new stamp structure created by the legislature, and delete references to the turkey, white-winged dove, and state waterfowl stamps. Currently, §53.60 authorizes the executive director to exempt certain persons from purchasing or possessing the listed stamps, exempts persons under the age of 17 and lifetime resident hunting license holders from purchasing or possessing the listed stamps, exempts a person with a lifetime resident combination hunting and fishing license from purchasing or possessing the listed stamps, exempts a qualified disabled veteran from purchasing or possessing the listed stamps, and lists the stamps contained in the collectors

edition stamp package. The proposed amendment would remove references to the turkey, white-winged dove, and state waterfowl stamps, insert references to the upland game bird stamp and the migratory game bird stamp, and provide an exemption to stamp requirements for active-duty members of the United States armed forces who are Texas residents.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years the rules as proposed are in effect, there will be fiscal implications to state government as a result of enforcing or administering the rules. The department estimates a revenue loss of approximately \$659,670 as a result of the waiver of stamp fees for Texas residents on active-duty military service. The estimate was derived by multiplying the estimated number of Texas residents on active-duty status (107,000) by the percentage of the general population of Texas residents who purchase a hunting (5.55%) or fishing license (15%), which produces the estimated number of Texas residents on active-duty likely to obtain the license package (21,989). This figure was then multiplied by the discounted price of the stamps contained in the "super combo" license package (\$30). The department does not have empirical data on purchases of license types or stamps by active duty military personnel; therefore, for comparative purposes, the department assumes that in prior years active duty military personnel who purchased licenses or stamps purchased the "super combo" package rather than individual licenses and stamps.

There will be no fiscal implications to units of local government. The portion of the amendments that effect stamp reorganization will not result in fiscal implications to state or local governments, since the upland and migratory game bird stamps and fees are created by statute and not by this rulemaking.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be to ensure that the department's rules regarding stamps and fees are accurate, and that the department is in compliance with the directives and intent of the legislature.

The proposed amendments will not result in adverse economic effects on small or microbusinesses or persons required to comply with the rules.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.3, §53.5

The amendments are proposed under the authority of Senate Bill 1192, which amended Parks and Wildlife Code, Chapter 43, by adding Subchapter S, which authorizes the commission to establish the fee for a stamp issued under the subchapter and to exempt a person or class of persons by rule from the stamp requirements of the subchapter; Parks and Wildlife Code, Chapter 43, Subchapter I, which authorizes the commission to exempt a person from the stamp requirement of the subchapter; Chapter 43, Subchapter M, which authorizes the commission to exempt a person from the stamp requirement of the subchapter; Chapter 43, Subchapter U, which authorizes the commission to exempt a person from the stamp requirement of the subchapter; and Chapter 50, which authorizes the commission to establish fees for combination licenses or license packages.

The proposed amendments affect Parks and Wildlife Code, Chapters 43 and 50.

§53.3. Combination Hunting and Fishing License Packages.

Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) Resident combination hunting and freshwater fishing package--\$47. Package consists of a resident hunting license, a resident fishing license and a freshwater fish stamp;

(2) Resident combination hunting and saltwater fishing package--\$52. Package consists of a resident hunting license, a resident fishing license, a saltwater sportfishing stamp, and a red drum tag;

(3) Resident combination hunting and "all water" fishing package--\$57. Package consists of a resident hunting license, a resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, and a red drum tag;

(4) Resident senior combination hunting and freshwater fishing package--\$15. Package consists of a resident hunting license, a resident fishing license and a freshwater fish stamp;

(5) Resident senior combination hunting and saltwater fishing package--\$20. Package consists of a resident hunting license, a resident fishing license, a saltwater sportfishing stamp, and a red drum tag;

(6) Resident senior combination hunting and "all water" fishing package--\$25. Package consists of a resident hunting license, a resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, and a red drum tag;

(7) Resident super combination hunting and "all water" fishing package--\$64. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, [a turkey stamp, a white-wing dove stamp, a state waterfowl stamp,] an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(8) Resident senior super combination hunting and "all water" fishing package--\$30. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, [a turkey stamp, a white-wing dove stamp, a state waterfowl stamp,] an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(9) Resident disabled veteran super combination hunting and "all water" fishing package--\$0. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, [a turkey stamp, a white-wing dove stamp, a state waterfowl stamp,]

~~stamp~~], an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag; and

(10) Texas resident active duty military super combination hunting and "all water" fishing package--\$0. Package consists of a resident hunting license, an upland game bird stamp, a migratory game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag; and

(11) [(40)] Replacement combination or replacement super combination packages--\$10 except for a replacement disabled veteran super combination hunting and "all water" fishing package or a Texas resident active duty military super combination hunting and "all water" fishing package, which shall be replaced at no charge.

§53.5. *Recreational Hunting Licenses, Stamps, and Tags.*

(a) Hunting licenses:

- (1) resident hunting--\$23;
- (2) special resident hunting--\$6. Valid for residents under 17 years of age, residents who are 65 years of age or older, and non-resident hunters who are under 17 years of age on the date of license purchase;
- (3) replacement hunting--\$10;
- (4) general nonresident hunting--\$300;
- (5) nonresident special hunting--\$125;
- (6) nonresident five-day special hunting--\$45;
- (7) nonresident spring turkey hunting--\$120; and
- (8) nonresident banded bird hunting--\$25.

(b) Hunting stamps and tags:

- (1) upland game bird [turkey]--\$7 [\$5];
- (2) migratory game bird [white-winged dove]--\$7; and
- (3) archery hunting--\$7[;]
- [(4) state waterfowl--\$7.; and]
- [(5) bonus deer tag--\$10].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under authority of Senate Bill 1192, which amended Parks and Wildlife Code, Chapter 43, by adding Subchapter S, which authorizes the commission to establish the fee for a stamp issued under the subchapter and to exempt a person or class of persons by rule from the stamp requirements of the subchapter; Parks and Wildlife Code, Chapter 43, Subchapter I, which authorizes the commission to exempt a person

from the stamp requirement of the subchapter; Chapter 43, Subchapter M, which authorizes the commission to exempt a person from the stamp requirement of the subchapter; Chapter 43, Subchapter U, which authorizes the commission to exempt a person from the stamp requirement of the subchapter; and Chapter 50, which authorizes the commission to establish fees for combination licenses or license packages.

The proposed amendment affects Parks and Wildlife Code, Chapters 43 and 50.

§53.60. *Stamps.*

(a) Stamp form. Stamp sizes and formats shall be prescribed by the executive director.

(b) Stamp Design. An artist's original rendition will be the basic design. Stamps issued by an automated system may be an alternate design as prescribed by the executive director.

(c) Stamp Manner of Issuance. The stamp will be issued upon payment of the prescribed fee in a manner determined by the executive director.

(d) Stamp Purchase Identification and Possession Requirements.

(1) A person may hunt without a required state hunting stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.

(2) A person may fish without a required fishing stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.

(3) A state hunting or fishing stamp issued in an automated manner to a person using the stamp is valid for hunting or fishing purposes without the user's signature on its face.

(e) Stamp Exemptions.

(1) The commission grants the executive director authority to exempt persons participating in any event organized for the primary purpose of promoting participation in fishing or hunting activities from the requirement to purchase or possess the following stamps:

(A) migratory game bird stamp [white-winged dove stamp];

(B) archery hunting stamp;

(C) upland game bird stamp [turkey stamp];

[(D) state waterfowl stamp;]

(D) [(E)] saltwater sportfishing stamp; and

(E) [(F)] freshwater fishing stamp.

(2) All nonresident spring turkey hunting license holders are exempt from requirements for acquisition and possession of the upland game bird[turkey] stamp.

(3) Special resident hunting license holders who are under 17 years of age on the date of license purchase and all lifetime resident hunting license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) migratory game bird stamp[white-winged dove stamp];

- (B) upland game bird stamp; and~~[turkey stamp];~~
- (C) archery hunting stamp~~;~~ and]
- ~~{(D) state waterfowl stamp;}~~

(4) All lifetime resident combination hunting and fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

- (A) migratory game bird stamp [~~white-winged dove stamp~~];
- (B) upland game bird stamp [~~turkey stamp~~];
- (C) archery hunting stamp;
- ~~{(D) state waterfowl stamp;}~~
- (D) [~~(E)~~] saltwater sportfishing stamp; and
- (E) [~~(F)~~] freshwater fishing stamp.

(5) All lifetime resident fishing license holders are exempt from requirements for acquisition and possession of the following stamps;

- (A) saltwater sportfishing stamp;
- (B) freshwater fishing stamp.

(6) All persons meeting the definition of a qualified disabled veteran under the provisions of Parks and Wildlife Code, §42.012(c), are exempt from the fees for the following stamps:

- (A) migratory game bird stamp [~~state waterfowl~~];
- (B) upland game bird stamp [~~turkey~~];
- ~~{(C) white-winged dove;}~~
- (C) [~~(D)~~] archery;
- (D) [~~(E)~~] saltwater fishing; and
- (E) [~~(F)~~] freshwater fishing.

(7) All Texas residents on active duty in the armed forces of the United States (including members of the Reserves and National Guard on active duty) are exempt from the fees for the following stamps:

- (A) migratory game bird stamp;
- (B) upland game bird stamp;
- (C) archery;
- (D) saltwater fishing; and
- (E) freshwater fishing.

(f) **Obsolete Stamps and Decals.** An obsolete stamp is a stamp that is not valid.

(1) Obsolete stamps and decals shall be sold for informational purposes, either at an established fee for collector's edition stamp package, or at face value for individual stamps, plus a processing charge sufficient to recover shipment, postage, and sales tax.

(2) Stamps and decals shall remain on sale for a maximum of one fiscal year after expiration. During the second year, obsolete stamps and decals shall be sold only by book.

(3) Previous issues of Nongame and Endangered Species stamps may be made available for sale at \$10 for individual stamps or decals, and \$75 or less for a complete set of the 11 stamps issued from 1985 through 1995. The department may sell a limited number of collector's sets of the 11 stamps issued from 1985 through 1995,

framed and mounted, for \$300 or less per set. The department may add to this price a processing charge sufficient to recover shipment, postage, and sales tax. The Department may give away earlier issues of decals and use previously issued stamps in merchandise items that are offered for sale or as promotional items.

(g) Nongame and Endangered Species stamps issued during and after 1996 are one of seven stamps issued as collectors series set and are subject to the same rules as other obsolete stamps.

(1) The executive director may maintain a limited number of stamps and decals of each type and year.

(2) All other obsolete stamps and decals shall be destroyed.

(h) Collector's edition stamp package.

(1) A collector's edition stamp package shall consist of one each of the following stamps:

- (A) migratory game bird stamp [~~turkey stamp~~];
- (B) upland game bird stamp [~~white-winged dove stamp~~];
- (C) nongame stamp;
- (D) archery stamp;
- ~~{(E) state waterfowl stamp;}~~
- (E) [~~(F)~~] saltwater sportfishing stamp; and
- (F) [~~(G)~~] freshwater fishing stamp.

(2) Stamps in the package are not valid for hunting or fishing.

(3) Fee for the package shall be \$10 wholesale price and \$20 retail price plus applicable sales tax.

(i) In addition to the freshwater fishing stamp, the department may make available a collectible freshwater habitat stamp for a fee of \$5.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department (TPWD) proposes new §53.91, concerning Documented Vessels, and an amendment to §53.110, concerning Marine Dealer, Distributors, and Manufacturers. Under Parks and Wildlife Code, Chapter 31, the owner of each vessel requiring numbering by this state shall file an application for a number with the department, an authorized agent of the department, or a county tax assessor-collector.

Proposed new §53.91 prescribes the process and documentation necessary to register a new, used, or previously documented vessel. The proposed new section is necessary to establish procedures for vessel documentation and registration that are

consistent with those used in other states. Given the commercial and recreational interrelationships between Texas and other states with respect to boats, boating, and boat sales, the department believes it is important to implement standardized practices to insure that the interactions between regulatory agencies, commercial entities, and the public are similar to what occurs or is normal in other states.

In addition to stipulating the required documentation for registration, the proposed new section would also establish a maximum period of 15 days during which the purchaser of a vessel would be allowed to operate the vessel under the dealer's number without having filed an application for a certificate of number. The new section is necessary to provide for lawful use of an unregistered vessel between the time a vessel is purchased and the issuance of a certificate of number.

The proposed new section also makes an exception to the applicability of the rule to a vessel used as a tender for direct transportation between a mother ship and the shore and provides for the marking for such vessels. The amendment is necessary to provide for a scenario in which a vessel is used only as a ferry between a registered vessel and shore and separate vessel registration is not necessary for the purposes of the subchapter because of such use.

The amendment to §53.110, concerning Marine Dealers, Distributors, and Manufacturers, clarifies the application requirements for persons seeking to acquire a dealer's license and establishes procedures for the denial of license issuance, denial of license renewal, license suspension, and license revocation of marine dealer, distributor, and manufacturer licenses by the department. The amendment is necessary as a result of the passage of Senate Bill 489 by the 79th Texas Legislature, Regular Session. Under the terms of S.B. 489, persons holding a dealer's, distributor's, or manufacturer's license issued by the department must enter into a license agreement with the department; and the department is authorized to establish license suspension and revocation procedures.

The proposed amendment also introduces definitions for 'contest,' 'demonstrate,' 'event,' 'recreational purposes,' 'show,' and 'test' in order to create unambiguous terms for purposes of applicability, enforcement, and compliance. Under Parks and Wildlife Code, §31.041, a licensee may use a dealer's, distributor's, or manufacturer's number to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel; however, the vessel cannot be used for recreational purposes or for participation in a contest or event. The meaning of 'recreational use' is problematic. Before buying a vessel for a given purpose or purposes, a prospective purchaser understandably would want to evaluate the vessel's performance at given applications. For a fishing vessel, this would mean using the vessel to go fishing; for a skiing vessel, it would mean towing a skier. Such instances of use are clearly connected to the process of shopping for and evaluating a vessel and are not purely recreational. The amendment is necessary to provide clear differentiation between allowed and prohibited uses of vessels by licensees and prospective customers.

The amendment also adds a provision to the application requirements for a marine dealer's license to address licensure of persons whose businesses are not confined to a fixed physical location, such as commission-sale brokers who at any given time may be attempting to sell vessels located on the water in different parts of the state. The proposed amendment would require

persons engaged in such types of businesses to furnish to the department the physical address, phone number, and management/ownership information for vessels not physically located at the permanent business location of the licensee. The amendment is necessary to ensure that the department's rules encompass the variety of business models that may be affected by the requirements of Parks and Wildlife Code, Chapter 31.

The proposed amendment also adds clarifying language to the list of documentation required to be maintained by licensees. Under current subsection (g), copies of any and all documents, forms, and agreements applicable to a particular sale are required to be retained for department inspection. The proposed amendment inserts additional language to clarify that acts such as consignment, transfer of ownership titling, titling and registration, and documentation activities are all considered to be a part of sales activities. The amendment is necessary to clarify exactly what activities require a person to obtain a dealer's license.

The proposed amendment also stipulates that an applicant must sign a license agreement with the department indicating that the person agrees to abide by all applicable statutes and regulations as a condition of license issuance. The amendment is necessary to ensure that the full range of possible activities contemplated by the legislative intent of Parks and Wildlife Code, Chapter 31, is explicitly acknowledged in the rule, and to comply with the mandates of S.B. 489, which requires licensees to enter into a license agreement with the department.

The proposed amendment also establishes criteria and procedures for revocation and suspension of licenses. The amendment implements Senate Bill 489, enacted by the 79th Texas Legislature, which authorizes the commission to adopt rules governing revocation and suspension of licenses. The amendment is necessary to protect the public, and the boating public in particular, by creating a mechanism for the department to prevent persons who have not met the appropriate standards from operating a business regulated by the department. The rule provides for notice and hearing when the department determines that a license should be revoked or suspended. The provisions are necessary to provide a fair opportunity to be heard to those who may lose their license, and are necessary to meet due process requirements.

Ms. Frances Stiles, Assistant Director of Revenue, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal implications to state government as a result of enforcing or administering the rules. The department would incur costs related to administrative hearings necessitated in the event of suspension or revocation procedures. The costs are believed to be minimal, but cannot be quantified, as there is no way to predict, for purposes of estimation, the nature, scope, or range of future administrative hearings, if any, and no empirical data upon which to base to an estimate. Additional positive revenue impacts could be created by the sale of validation cards under the provisions of proposed §65.110(g); however, the cards are not mandatory and the department has no empirical data upon which to base an estimate. There will be no fiscal implications for units of local government as a result of administering the rules as proposed.

Ms. Stiles also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the improved ability of the department to protect consumers and the safety of the boating public.

There may be a negligible economic effect on small businesses, microbusinesses, and persons required to comply with the rules as proposed, in the form of compliance with the requirements of §53.110(b)(7), which requires dealers to maintain a list of marinas where floating inventory is maintained; (g)(7), which requires dealers to maintain a log of all validation card usage by the dealer. The cost of compliance is unquantifiable but believed to be negligible.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Frances Stiles, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4860 (e-mail: frances.stiles@tpwd.state.tx.us).

SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.91

The new section is proposed under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

The proposed new section affects Parks and Wildlife Code, Chapter 31.

§53.91. Documented Vessels.

(a) An original or renewal certificate of number and validation decal for a new, used, or previously documented vessel may be acquired at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application on a form supplied by the department;

(2) a copy of:

(A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC); or

(B) a copy of the application for initial documentation with the USCGNVDC;

(3) payment of any tax required under Tax Code, or verification of payment; and

(4) payment of the appropriate registration fee as required by §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees);

(b) A purchased vessel may be used by the purchaser under the dealer's number of the seller for a period of no more than 15 consecutive days from the date of purchase prior to filing an application for a certificate of number.

(c) A vessel used as a tender for direct transportation between a mother ship and the shore is not required to display a validation decal, provided:

(1) the vessel is equipped with propulsion machinery of less than 10 horsepower;

(2) is owned by the owner of a vessel for which a valid certificate of number has been issued and displays the registration number of that vessel followed by the suffix "1" (i.e. TX-1234-AB-1) in the manner specified by Parks and Wildlife Code, §31.031; and

(3) is used for no purpose other than direct transportation between a mother ship and the shore.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §53.110

The amendment is proposed under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.110. Marine Dealer, Distributors, and Manufacturers.

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Broker--A person not employed by a licensee but who acts as an intermediary or assists in the sale, sale on consignment, display for sale, purchase, trade, or transfer of a vessel, motorboat, or outboard motor in exchange for a fee, commission, or other consideration more than five times per year. For the purposes of this subchapter, a broker is a dealer.

(2) Consignment--The sale or offer for sale by a person other than the owner under terms of a verbal or written authorization from the owner.

(3) Contest--A competition for a prize offering.

(4) Demonstrate--To use a vessel for the purpose of furnishing an example or illustration of practical application to a customer.

(5) Event--A planned or scheduled gathering or activity involving the use of vessels, but does not include promotional participation involving the showing of vessels by a licensee, or representative of a licensee, acting within the scope of the licensee's legitimate business activities, provided the duration of the participation is less than 72 consecutive hours.

(6) Recreational purposes--Any activity not connected with the sale or exchange of a vessel or outboard motor.

(7) Show--The exhibit or display a vessel by a licensee for a legitimate business purpose.

(8) Test--Any use of a vessel by which a licensee, or representative of a licensee, acting within the scope of the licensee's legitimate business activities, evaluates the operational worthiness of the vessel.

(b) A person shall apply for a license as a dealer by submitting a properly completed, department-approved application form, accompanied by the following:

- (1) the fee prescribed by law for each license requested;
- (2) photographs clearly showing:

(A) the permanent sign at the location designated in the application as the applicant's permanent place of business, clearly indicating the name of the business;

(B) the front of the business with public access; and

(C) space sufficient for office, service area (if applicable), and display of products (if applicable);

(3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

(4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business[; and]

(6) a list of dealer agreements; and [-]

(7) if the applicant maintains floating inventory, a list of marinas where floating inventory is displayed for sale. The list must account for no less than 90% of the inventory and must identify, at a minimum:

(A) the name and physical address of each marina;

(B) the management personnel at each marina; and

(C) the phone number for each marina.

(c) A person shall apply for a license as a distributor or manufacturer by submitting a properly completed, department-approved application form accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(3) a complete list of manufacturers represented by a distributorship; and

(4) a complete list of distributors, dealers, and manufacturers.

(d) The department may issue a license under this subchapter if:

(1) the applicant submits a complete application form and required attachments; and

(2) the applicant signs a department-provided license agreement ~~[affidavit]~~ stating that the applicant agrees to comply with all applicable state laws, ~~[full compliance with state law]~~ including Occupation Code, Chapter 2352, concerning Franchise Agreements, when required.

(e) A license holder shall notify the department in writing within 10 days if there is any change of:

- (1) ownership;
- (2) business name;
- (3) physical location;
- (4) dealer agreement;
- (5) distributors, dealers, or representatives; or
- (6) address or phone information.

(f) The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business for which the license is issued.

(g) At all times that a vessel is on the water for the purposes of showing, demonstrating, or testing, a department-issued validation card bearing the dealer's license number must be aboard the vessel and made available for inspection at the request of any department employee acting in the scope of official duties.

(1) The department shall issue one validation card with each license.

(2) Additional validation cards may be purchased by the licensee upon payment of a fee in the amount specified by §53.16(a)(3) of this title (relating to Vessel, Motor, and Marine Licensing Fees) per card.

(3) A licensee shall maintain a current daily log accounting for each use of each validation card issued to the licensee. The log required by this section shall be retained for a period of two years and shall be made available at the request of any department employee acting within the scope of official duties. At a minimum, the log shall indicate, for each use of a validation card:

(A) the date and time of use;

(B) the specific purpose of the use;

(C) the name of the person using the validation card;

(D) a state-issued driver's license or identification card number; and

(E) the name of the person authorizing the use of the validation card, if authorized by any person other than the licensee.

(4) A validation card is not valid if the dealer's permit for which it is issued is not valid.

(h) [(g)] A license holder must keep a complete record available for inspection in the place of business relating to all vessels, motorboats, and outboard motors purchased, sold, or displayed for sale for a minimum of 24 months. Content of records must include the:

- (1) date of purchase;
- (2) date of sale;

- (3) hull identification number and/or motor identification number;
 - (4) name and address of person selling, trading or consigning to the dealer;
 - (5) name and address of person purchasing from the dealer;
 - (6) name and address of selling dealer individual if vessel and/or outboard motor is offered for sale by consignment;
 - (7) a copy of the vessel/outboard motor title/registration receipt;
 - (8) copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, transfer of ownership titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and
 - (9) copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors.
- (i) The department may suspend or revoke a license under this subchapter if:
- (1) the licensee has been finally convicted or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;
 - (2) the licensee has violated Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;
 - (3) the licensee made a false or misleading statement in connection with the original or renewal application for the license, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;
 - (4) the licensee is indebted to the state for taxes, fees, or payment of penalties imposed by Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;
 - (5) the applicant or licensee was previously the holder of a license issued under this subchapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled;
 - (6) the applicant or licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license issued under this subsection was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled;
 - (7) the business does not intend to be open to all members of the public nor during normal business hours;
 - (8) the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation; or
 - (9) the licensee or an employee of the licensee is finally convicted or receives deferred adjudication for a violation of any federal or state law relating to the sale, distribution, financing, registration, taxing, or insuring of a vessel.
- (j) Provisions governing the revocation or suspension of a license are as follows.

(1) Before suspending or revoking a license under this subchapter, the staff of the executive director of the department (executive director) shall provide notice by certified mail to the licensee's last known address of the department's intent to revoke or suspend the license. Within 30 days of the date of the letter, the licensee may request an administrative hearing. The hearing request must be in writing and addressed to: Manager of Boat Titling, Registration, and Marine Licensing, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. For a hearing request to be valid, the department must receive the hearing request within 30 days of the date of the letter notifying the licensee of the department's intent to revoke or suspend the license. If no hearing request is received within this time frame, the executive director shall make a final decision whether to revoke or suspend the license.

(2) Timely hearing requests shall be referred by the department to the State Office of Administrative Hearings (SOAH) for adjudication.

(3) The department shall provide notice of the hearing date to the licensee by certified mail at the licensee's last known address at least ten days prior to the hearing date.

(4) The licensee shall be responsible for all hearing costs to SOAH, including but not limited to transcript and court reporting costs incurred by the department. Prior to the beginning of the hearing, at the request of department, the SOAH judge shall require the licensee to post a bond in an amount set by the SOAH judge, payable to the department and conditioned on prompt payment of hearing costs. Failure to post the requested bond prior to the start of the hearing shall result in default by the licensee.

(5) The failure of the licensee to appear at the hearing shall entitle the department's staff to request issuance of a default proposal for decision or order by the judge.

(6) At the conclusion of the hearing, SOAH shall prepare a proposal for decision in accordance with SOAH rules. The proposal for decision shall be submitted to the department's deputy executive director for administration, who will make the final decision on whether to revoke or suspend the license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER A. PROOF OF RESIDENCY REQUIREMENTS

31 TAC §55.1

The Texas Parks and Wildlife Department (the department) proposes new §55.1, concerning Proof of Residency. Under current statutes, there is no single standard for authoritatively establishing the residency status of a person for the purpose of obtaining resident licenses and permits. The term 'resident' is defined in

several places in the Texas Parks and Wildlife Code to mean a person that has resided in Texas for the six-month period immediately preceding an application for a license or permit. However, for the purposes of licenses issued under Parks and Wildlife Code, Chapters 42 and 46, the term 'resident' includes members of the United States armed forces on active duty, dependents of members of the United States armed forces on active duty; and members of any other category of individuals that the commission by regulation designates as residents.

House Bill 1636, enacted by the 79th Texas Legislature, Regular Session, added Parks and Wildlife Code, §11.004, which authorizes the Parks and Wildlife Commission to prescribe by rule the proof required to demonstrate residency in this state for the purpose of obtaining a license or permit issued by the department. The proposed new rule sets forth the documentation and combinations of documentation acceptable to the department for determining or proving residency for the purposes of obtaining a resident license or permit. The department would like to note that the provisions of the proposed new section will not necessarily be used to screen license purchasers at the time of purchase; rather, they will be used as a definitive standard to determine residency if questions arise regarding eligibility, or in the prosecution of criminal acts. The proposed new rule is necessary to provide a single, unambiguous standard that can be universally applied to all licenses and permits issued by the department.

Mr. Robert Macdonald, regulations coordinator, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule will be a uniform standard for determining residency standards for the purpose of obtaining a license or permit issued by the department.

The proposed rule will not result in adverse economic effects on small or microbusinesses or persons required to comply with the rule.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

Comments on the proposed rule may be submitted by phone, written correspondence or e-mail to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; or robert.macdonald@tpwd.state.tx.us.

The new section is proposed under the authority of House Bill 1636, enacted by the 79th Texas Legislature, Regular Session, which authorizes the Parks and Wildlife Commission to prescribe by rule the proof required to demonstrate residency in this state for the purpose of obtaining a license or permit issued by the department.

The proposed new section affects Parks and Wildlife Code, Chapter 11.

§55.1. Proof of Residency.

The requirements of this section are in addition to any requirements of Parks and Wildlife Code, Chapters 42 and 46. In this section, "applicant" means a person applying for a license or permit issued by the department.

(1) Proof that an applicant has resided continuously in Texas for more than six months immediately before applying for a resident license or permit issued by the department shall consist of any four of the following:

(A) a current property tax statement indicating that the applicant is the owner of homestead property in Texas;

(B) a valid drivers license issued by the Texas Department of Public Safety not less than six months prior to the application to the department for a resident license or permit;

(C) the most recent six months of utility bills (from a single utility) showing the applicant's name and a physical address in Texas;

(D) the most recent six months of paycheck receipts showing the applicant's name and a physical address in Texas;

(E) a current Texas voter registration certificate showing the applicant's name and a physical address in Texas, issued not less than six months prior to an application to the department for a license or permit;

(F) the person's most recent tax return statement from the Internal Revenue Service showing the applicant's name and a physical address in Texas;

(G) a current vehicle registration showing the applicant's name and a physical address in Texas, issued not less than six months prior to an application to the department for a license or permit;

(H) military service record(s) indicating that the applicant's home of record is in Texas at the time of application;

(I) military service record(s) indicating that the applicant had been assigned to a duty station in Texas for the six months immediately prior to the time of application;

(J) a passport issued by the United States of America, showing the applicant's name and a physical address in Texas; or

(K) a statement from the person's parole board or probation officer attesting to the fact that the person has continuously resided in Texas for the six months immediately preceding the application for a license or permit.

(2) If an applicant is under the age of 25 and living in another state for educational purposes, proof that the applicant has resided continuously in Texas for more than six months immediately before applying for a license or permit issued by the department shall consist of:

(A) a notarized statement to the effect that the person is a dependent of a Texas resident; and

(B) a tuition receipt or other official evidence that the person is currently enrolled as a non-resident in an educational institution located in another state.

(3) The department will not issue a resident license or permit to any person if any proof of residency presented to the department indicates residency anywhere other than Texas.

(4) A person who claims residency in any other state for any purpose is not a Texas resident for the purposes of obtaining a resident license or permit from the department.

(5) Upon determination by the department that a person who obtained a resident license or permit was not eligible to obtain the license or permit, the department shall notify the person that the license is void and shall be surrendered to the department. A person that the department determines has obtained a resident license or permit unlawfully is subject to criminal prosecution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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CHAPTER 58. OYSTERS AND SHRIMP

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.11, §58.22

The Texas Parks and Wildlife Department proposes amendments to §58.11, concerning Definitions, and §58.22, concerning Commercial Fishing.

Responsibility for adopting rules covering the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapter 76. Currently, Parks and Wildlife Code, §76.001, defines a "barrel" and "box" for the purposes of measuring take in the oyster fishery; however, neither of these terms reflect the way oysters are packaged on vessels or purchased at the dock. The proposed amendment to §58.11 would add a definition for the term 'sack.' The purpose of defining a sack as a measure of take is to place statutory volumes in a context understandable to fishermen in the terminology of the trade. The proposed amendment creates a standardized measurement (110 pounds of oysters, including the sack, equals the volume of one box as defined by statute). The proposed amendment is intended to make it easier for fishermen to comply with limits and easier for game wardens to enforce them. The proposed amendment also makes the definition consistent with that used in the Health and Safety Code, §436.103(b), as it relates to the "sack" tax currently collected in the oyster industry.

The amendment to §58.22 replaces the term 'barrel' with the term 'sack' throughout the section.

Following extensive discussions with the department's Oyster Advisory Committee, the department proposes to reduce the daily limit of oysters from 50 barrels (150 sacks) of culled oysters to 90 sacks and to convert 2 barrels of uncultured oysters in possession to 6 sacks to reflect the changed units. The purpose of this action is to promote efficiency in utilizing oyster resources by providing a more stable price structure for oysters taken throughout the duration of the open season. The proposed rulemaking,

if adopted, is expected to lengthen the productive part (in terms of sacks per vessel landed) of the season. If landings are more stable, a more stable average price throughout the season could be expected, which should create overall economic benefits for the industry. An argument could be made that catching more sacks per trip will increase efficiency and create more catch per unit of effort leading to greater net profits. If price did not decline during these early harvest peaks that might in fact be the case; however, dealers have indicated that prices decline due to the high harvest levels at the beginning of the season.

The 2004 oyster season would be a good example of a volatile market. Landings declined during the season from an initial average of 7,973 sacks per day (November 2003) to an average 2,868 sacks per day by the last month of the season (April 2004). The corresponding average price per sack in November 2003 was \$14.11 per sack and the average of April 2004 was \$15.28 per sack. This indicates the price at the beginning of the season was 7% lower than the price at the end of the season without accounting for any quality differences that may occur between the fall and spring season for oysters. If a fisherman who could catch 150 sacks per day at the beginning the season maintained this proportion of the catch throughout the season, only fifty-three sacks per day would be caught in the last month. Gross receipts would begin the season at \$2,115 per day and drop to \$824 per day by the end of the season.

In contrast, the 2003 oyster season would be an example of a more stable market. Landings declined slightly during the season from an initial average of 5,753 sacks per day (November 2002) to an average 3,595 sacks per day by the last month of the season (April 2003). The corresponding average price per sack in November 2002 was \$14.42 per sack and the average of April 2003 was \$14.47 per sack. If a fisherman who could catch 150 sacks of oysters per day at the beginning the season maintained this proportion of the catch throughout the season, landings (total sacks) would be approximately 18% higher than total landings during the 2004 season example above. Gross receipts would begin the season at \$2,163 per day and end the season at \$1,356 per day, and total gross receipts under this scenario would be 19.7% higher than total gross receipts under the 2004 example above.

The proposed rulemaking is made under the assumption that to receive the benefits of a stable market in a majority of future seasons, the fisherman's daily harvest must be reduced from the current level of 150 sacks per day to the proposed bag limit of 90 sacks of oysters per day so that the total available oysters in Texas bays would be reduced at a slower rate through the season than can be routinely obtained with the higher bag limit. Intuitively, this would suggest a significant reduction in gross receipts due to the significant reduction in bag. However, the behavior of the market it self provides benefits to the fisherman. If a fisherman during the 2003 season (i.e., used as the stable example above) could catch 90 sacks of oysters per day at the beginning the season and maintain this average catch rate throughout the season, landings (total sacks) would be roughly equivalent to the total landings during the 2004 season example above. However, gross receipts would begin the season at \$1,298 per day and end the season at \$1,301 per day, and total gross receipts under this scenario would be 1.6% higher than total earnings under the 2004 example above. Fishermen will be impacted by this proposal; however, it is expected that the benefits to fishermen will offset the negative impacts of a reduced bag on early season efficiency.

Reducing the amount of oysters taken by an individual boat alone would not accomplish this or any other management goal had not the 79th Legislature limited the number of boats allowed to fish for oysters. Therefore, the proposed rulemaking is consistent with the industry's recommendations to limit the number of commercial oyster boat licenses that may be issued for use in Texas waters.

Robin Riechers, Director of Science and Policy, has determined that for each of the first five years the rules as proposed are in effect, there will be positive implications to state government and no fiscal implications to local governments as a result of administering or enforcing the proposed rules. The rules as proposed will simplify the enforcement of the sack limit and create a standard "sack weight" equivalent to the "sack weight" used in the Health and Safety Code. A greater level of enforcement is expected with the new definition of a sack.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be more effective enforcement of rules to protect the oyster resources of the state, a more stable and viable oyster industry, and rules that are clearer, more concise, more accurate, and more user friendly. The enhanced price stability throughout the season and the overall increase in total revenue is expected to outweigh any reductions in efficiency which may happen early in the season.

There will not be an adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The department anticipates that the proposed rules will result in a reduction in harvest in the early part of the season, which has traditionally been much higher than the later part of the season. However, by stabilizing harvest, the department anticipates that the proposed rule will reduce the decline in late season harvest experienced in recent years, thus offsetting any fiscal impacts experienced in the early season.

The department has not drafted a local employment impact statement under Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

The amendments are proposed under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter, §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 76.

§58.11. *Definitions.*

The following words and terms, when used in the subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Sack of oysters--A volume of oysters equivalent to a box that weighs no more than 110 pounds including the sack.

§58.22 *Commercial Fishing.*

(a) - (b) (No change.)

(c) *Possession Limits.* It is unlawful while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to have on board any licensed commercial oyster boat:

(1) more than 90 sacks [~~50 barrels~~] of culled oysters of legal size; or

(2) more than 6 sacks [~~two barrels~~] of uncultured oysters while on the reef.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

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CHAPTER 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.2

The Texas Parks and Wildlife Department (the department) proposes an amendment to §59.2, concerning Park Entrance and Use Fees. The amendment would implement an entrance fee range \$1 - \$15 for the Battleship Texas State Historic Site.

The department establishes a fee range, consisting of an upper and lower value, for each type of facility or service (or combination thereof), which may vary from site to site. The purpose of the fee-range approach is to provide the flexibility for the department to make incremental adjustments to the fee structure from time to time (within the approved ranges) in response to changing conditions over a multi-year period. The fee range proposed by the department was determined by analysis of user demographics, benefit, demand, and comparability with other providers of similar facilities and/or services operated under similar conditions, and leisure industry trends.

The proposed amendment is necessary to provide additional funding to maintain the current level of park services at the Battleship Texas for the benefit of the public.

Mr. Walt Dabney, Parks Division Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of

enforcing or administering the rule as proposed. The current entrance fees at the Battleship Texas State Historic Site, under the fee range prescribed by §59.2(e) are: \$7.00 for persons 13 years of age and older, \$4.00 for persons 65 years of age and older, free admission to persons under the age of 13, and discounted entrance fees for groups. Upon adoption of this rulemaking, the fees and the fee structure will change. The department will implement increased fees below the proposed maximum of the fee range under a new fee structure. The new fees will be \$10 per person. There will be additional discounted visitation in the form of persons who visit the site under the State Parks Pass, the totals for which are unquantifiable, but who will pay a \$5.00 fee. The department estimates that approximately 145,900 persons will visit the site in each of the first five years that the new fee range is in effect. The maximum possible revenue per year that could be generated under the proposed new fee range would be \$1,288,340. This estimate was derived by subtracting the total visitation revenue of 2004 (\$900,160) from the estimated total visitation revenue for 2006, calculated at the maximum per-person price of \$15. (\$2,188,500). The estimate is an approximate value representing the total possible revenue increase under the proposed rule.

There will be no fiscal implications for units of local governments.

Mr. Dabney also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the continuation of Battleship Texas State Historic Site services at current levels for public enjoyment and benefit.

There will be no adverse economic effects on small businesses or microbusinesses as a result of administering or enforcing the proposed rule. The economic effect on persons required to comply with the rule as proposed will be the cost of the fee to enter the site.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Mike Crevier, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560 or 1-800-792-1112 extension 8560 (e-mail: mike.crevier@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §13.015, which authorizes the department to charge and collect park user fees for park services, and requires the commission to set the fees.

The proposed amendment affects Parks and Wildlife Code, Chapter 13.

§59.2. Park Entrance and Use Fees.

(a) An entrance/day use permit fee will be levied at state parks. The fee will grant entry and presence privileges for a specific 24-hour period or part thereof, regardless of the number of times of entry during the valid period. At the end of each 24-hour period, the fee will become due for the succeeding 24-hour period or part thereof.

(b) An annual entrance/day use permit fee in the range of \$50-\$100 may apply at certain state parks where entrance fees are prescribed. The annual permit will admit all occupants of a private, non-commercial vehicle, but will not apply to commercial, quasi-public, or public buses, or other such vehicles.

(c) Annual entrance permits are not valid for commercial purposes, conducted tours, for fishing privileges on fishing piers, or at parks where entrance fees are not prescribed.

(d) A Youth Group Annual Entrance Permit may be purchased by youth organizations composed of individuals age 18 and under for an annual fee of \$50-\$300. The group must be designated as a nonprofit organization. The permit is valid for entry at all recreational parks and historic sites managed by Texas Parks and Wildlife Department. No more than 50 persons, including a reasonable number of adult supervisors as determined by the site manager will be admitted with each permit. The number of vehicles or the number of individual persons per historic site may be limited by the park manager. An additional permit(s) is required if the group exceeds 50 persons. Permit is valid for 12 months from date of purchase. To purchase the group permit, eligible organizations must submit an application along with the required fee to Texas Parks and Wildlife Headquarters, any state park, or other office designated by the department for approval. The permit authorizes entry of vehicles carrying group members provided the adult sponsor presents the permit(s) at the park entrance and identifies each vehicle carrying group members.

(e) An entrance fee of \$1.00-\$7.00 will apply on a per person basis at parks designated by the department. Where variable entrance and use fees are authorized by the commission, they may be set on an individual park basis.

(f) An entrance fee of \$1.00-\$15 per person will apply at the Battleship Texas State Historic site.

(g) [(f)] The executive director may, at his discretion, temporarily waive any entrance fees or conditions thereof established in this section at any park when circumstances adversely affect public enjoyment of the recreational opportunities normally available. The executive director may discount or waive entrance fees in order to enhance utilization or promote the future use of existing facilities. The executive director may designate other department personnel to discount or waive entrance/day use fees.

(h) [(g)] No entrance fee will be charged or collected at parks unless the department deems it feasible to collect the fees.

(i) [(h)] Persons entering parks by boat, bicycle, or on foot are authorized to use a valid annual park entrance permit receipt in lieu of paying an individual entrance fee. An individual presenting a receipt must be the same person to whom the annual permit was issued. Individuals eligible for park entry as specified herein may be accompanied by as many as five other persons to enter by boat, bicycle, or on foot.

(j) [(i)] Persons whose date of birth is before September 1, 1930, and veterans of the armed services of the United States who, as a result of military service, have a service-oriented disability as defined by the Veterans Administration, consisting of the loss of the use of a lower extremity or of a 60% disability rating and who are receiving compensation from the United States government because of the disability, will be issued a state parklands passport at no cost upon application and not be required to pay an entrance fee at state parks. A resident of this state whose birth date is after August 31, 1930, and who is also a holder and in possession of a valid state parklands passport shall pay 50% of the normal entrance fee rounded to the nearest higher whole dollar. Non-residents of this state whose birth date is after August 31, 1930, shall pay the normal entrance fee. State parklands passports will

be issued to eligible persons at state parks and the Austin headquarters. A driver's license, birth certificate, military discharge papers, or any other suitable identification considered sufficient proof for establishing the age and identity of an individual must be presented at the time the passport is issued to persons 65 years of age and over. Disabled veterans must establish eligibility by presenting one of the following:

- (1) disabled veteran's of Texas license plate receipt;
- (2) veteran's award letter (which establishes the degree of service-connected disability);
- (3) tax exemption letter for Texas veterans.

(k) [(j)] A holder of a state parklands passport whose date of birth is before September 1, 1930 may enter the park without payment of an entrance fee. All residents of this state whose date of birth is after August 31, 1930, and who are also the holders and in possession of a state parklands passport may enter a park site upon payment of 50% of the normal entrance fee for that site, rounded to the nearest higher whole dollar. This passport does not exempt the holder from payment of fees for facility use or participation in certain activities required in some units of the state park system.

(l) [(k)] An individual with a documented physical or mental impairment may be issued a parklands passport under the provisions of this section.

(1) Eligibility requirements. To be eligible to receive a parklands passport under this section, an individual with a physical or mental impairment that substantially limits one or more major life activities must:

- (A) have been medically determined to be disabled as a result of such mental or physical impairment (including blindness) for purposes of receiving benefits under the Social Security Act; and
- (B) be currently receiving such benefits.

(2) Application procedure. An individual applying for a parklands passport under this subsection shall:

- (A) apply in person at Texas Parks and Wildlife Department Headquarters or at any park or other office designated by the department;
- (B) submit positive identification and either an Award of Benefits Letter, or a Statement of Benefits, from the Social Security Administration attesting to the applicant's permanent disability;
- (C) submit an affidavit or attestation in a form approved by the Department certifying that the applicant meets the requirements of paragraph (1) of this subsection.

(3) Privileges. A parklands passport used for the purposes of this subsection shall discount entry fees to State Parks for the individual pass holder for a period of one year from the date of issuance. The discount will be 50% of the established park entry fee, rounded up to the nearest whole dollar amount. The pass shall be nontransferable, but shall also authorize discounted entry for one person accompanying the pass holder, if the pass holder needs assistance while visiting the State Park. For the purposes of this subsection, "accompanying" means entering a park simultaneously with the pass holder.

(m) [(h)] A replacement for a state parklands passport may be issued when the original registration is lost, stolen, or damaged.

(n) [(m)] Entrance fees established in subsections (b) and (d) of this section will apply to all private aircraft and noncommercial motorized vehicles, which includes all vehicles with two or more wheels. Commercial, quasi-public, or public buses or other vehicles do not qualify for annual pass benefits.

(o) [(n)] Persons entering parks by bus, where entrance and use fees are charged on a per-person basis, will be charged normal entrance/day use fees.

(p) [(o)] Students, teachers, bus drivers, and children on group, school-sponsored visits to historic sites or parks for educational purposes may enter at the rate of \$1.00-\$5.00 per person at historic sites or at a park where day-use entrance and use fees are charged. The group or class must be accompanied by an adult supervisor(s). The \$1.00-\$5.00 per person fee applies to individuals from all public or private schools, colleges, and universities offering accredited courses.

(q) [(p)] Persons entering parks on foot, bicycle, or by boat where entrance and use fees are charged will be charged standard per-person entrance/day use fees.

(r) [(q)] The valid time period for daily entrance fees will be:

(1) for day use, the time period encompassing the day-use opening and closing hours of the park on the date on which admission is paid; and

(2) for overnight use, a 24-hour period beginning at 2 p.m. on the date admission is paid unless otherwise established at sites where circumstances or conditions warrant alternative timeframes.

(s) [(r)] At the discretion of the executive director, any person or persons may be exempted from the provisions of this section if the entry of such person or persons to a park or parks is necessary or desirable in order to provide a service for the state. The executive director is authorized to issue such entrance fee waivers under certain circumstances and conditions.

(t) [(s)] The executive director is authorized to establish an entrance fee in accordance with these sections at any site hereafter established as a state park when such action is deemed appropriate and in accord with applicable statutes.

(u) [(t)] When an annual or seasonal permit is offered for entrance in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit.

(v) [(u)] Any fees established in this section may be waived or reduced at the discretion of the executive director or his/her designee for public use of a park during special events or exhibitions.

(w) [(v)] The executive director may designate the amount of use fee and entrance fee within the total amount provided for by this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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SUBCHAPTER I. GRATUITIES

31 TAC §59.221

The Texas Parks and Wildlife Department (TPWD) proposes new §59.221, concerning Acceptance of Gratuities. House Bill 2685,

enacted by the 79th Texas Legislature (Regular Session), added new Parks and Wildlife Code, §11.0262, which provides that an employee of the state parks division of the department may accept a gratuity if the employee, as a primary job duty, serves food or beverages in a restaurant, cafeteria, or other food service establishment located within a state park that is owned and operated by the department, provided the employee has been authorized by the department to accept gratuities and reports the gratuities according to department rules.

The proposed new section would implement the requirements of H.B. 2685 by requiring the department to authorize those employees eligible to receive gratuities as a consequence of their department duties and by establishing the department policy with respect to the reporting of gratuities received by department employees. The proposed new section would require that employees be authorized by the executive director to receive gratuities as a consequence of their job duties. The proposed new section also would stipulate that employees authorized to receive gratuities and the department will follow all applicable laws and policies with respect to the reporting and recordkeeping of income from to the acceptance of gratuities.

Walt Dabney, Parks Division Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Based on 2004 pre-tax restaurant sales, the department will incur an estimated expense of \$34,782 per year due to FICA tax withholding. The department derived this estimate by taking the 2004 pre-tax restaurant sales (\$303,110), multiplying that figure by the customary gratuity of 15%, and multiplying the resulting number (\$45,466.50) by the department's share of FICA withholding tax (7.65%).

There will be no fiscal implications for units of local governments.

Mr. Dabney also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be compliance with the directives of the legislature.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Mike Crevier, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560 (e-mail: mike.crevier@tpwd.state.tx.us).

The new section is proposed under Parks and Wildlife Code, §11.0262, as added by House Bill 2685, 79th Texas Legislature, Regular Session, which authorizes the commission to adopt rules necessary to implement the requirements of the section.

The proposed new section affects Parks and Wildlife Code, Chapter 11.

§59.221. Acceptance of Gratuities.

(a) No employee of the department may accept a gratuity offered by a customer of a restaurant, cafeteria, or other food service establishment operated by the department unless the employee has been authorized to do so by the executive director.

(b) An employee authorized under subsection (a) of this section to accept gratuities shall follow the policies of the department and all applicable laws of the United States and the State of Texas applicable to the reporting of gratuities.

(c) The department shall follow all applicable laws of the United States and the State of Texas applicable to the reporting of gratuities received by department employees under the provisions of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

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CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.4

The Texas Parks and Wildlife Department (TPWD) proposes new §65.4, concerning Humane Dispatch of Game Animals and Game Birds. House Bill 2555, enacted by the 79th Texas Legislature (Regular Session), added Parks and Wildlife Code, §61.060, which provides a defense to prosecution for a violation of Parks and Wildlife Code, Chapter 61, or a regulation adopted or proclamation issued under the authority of Parks and Wildlife Code, Chapter 61, if a person dispatches a game animal or game bird that is mortally wounded (but not by an act of that person) or is behaving in a manner that is inconsistent with the manner in which a game animal or game bird that is not diseased typically behaves, provided that a reasonable person would be led to believe that the game animal or game bird poses a substantial risk of serious harm to itself, a person, or other wildlife.

The proposed new section would create a mechanism and procedure for the disposition of game animals and game birds killed under the provisions of the statute. The new section is necessary because game animals and game birds killed under the provisions of H.B. 2555 must be differentiated from those lawfully killed during an open season and those unlawfully killed under any circumstances. Under current law, only game animals and game birds lawfully killed during an open season may be reduced to possession and become part of the daily or seasonal bag limit of the person who killed them (or transferred to another person if accompanied by a properly executed wildlife resource document).

The proposed new section would function by stipulating that other than a department employee or as authorized by a department employee, no person may possess a game animal or game bird dispatched under the provisions of H.B. 2555. This is necessary to create a uniform starting point for the process by which ultimate disposition of animals and birds is determined.

The proposed new section also would prohibit the dispatch of a buck deer, a desert bighorn sheep, or a pronghorn antelope without prior authorization from the department. This provision is necessary to prevent unscrupulous persons from using the provisions of H.B. 2555 as a pretext for obtaining trophy-quality animals for use in the black-market trophy trade, and to prevent when possible the well-intentioned but unnecessary dispatch of individuals that are of relatively greater reproductive importance to a resident micropopulation than is the case with more abundant species.

The proposed new rule would also provide for the department to retain the game animal or game bird for research, disease testing, or any other purpose. This provision is necessary to allow for the use of the resource to advance department efforts, programs, initiatives, or other beneficial uses.

The proposed new rule also would provide that the provisions of the rule would not apply to employees of governmental entities in the performance of official duties. The provision is necessary to accommodate activities such as offal removal and disposal conducted by transportation, law enforcement, or health officials.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of the state's wildlife resources by providing a clear protocol for the disposition of game animals and game birds dispatched for humane reasons, allowing the department to differentiate between lawful and unlawful take.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The new section is proposed under Parks and Wildlife Code, §61.060, as added by House Bill 2555, 79th Texas Legislature, Regular Session, which authorizes the commission to adopt rules, including rules concerning the disposition of a game animal or a game bird that has been dispatched under the section, to implement the section.

The proposed new section affects Parks and Wildlife Code, Chapter 61.

§65.4. Humane Dispatch of Game Animals and Game Birds.

(a) Except as provided by subsection (e) of this section, it is an offense for any person to possess or dispose of a game animal or game bird dispatched under the provisions of Parks and Wildlife Code, §61.060.

(b) A person may dispatch a game bird or game animal other than a buck deer, desert bighorn sheep, or pronghorn antelope as provided for by Parks and Wildlife Code, §61.060, without notifying the department.

(c) No person may dispatch a buck deer, desert bighorn sheep, or pronghorn antelope as provided for by Parks and Wildlife Code, §61.060, without authorization from the department.

(d) No person may possess:

(1) the antlers from a deer dispatched under Parks and Wildlife Code, §61.060;

(2) the horns of a desert bighorn sheep dispatched under Parks and Wildlife Code, §61.060; or

(3) the horns of a pronghorn antelope dispatched under Parks and Wildlife Code, §61.060.

(e) A department employee acting within the scope of the employee's official duties may:

(1) direct a person to maintain a game animal or game bird or portion of a game animal or game bird as necessary for the department to take possession of the game animal or game bird or portion of the game animal or game bird for testing, research, or any other purpose the department deems appropriate; and

(2) authorize final disposition of a game animal or game bird dispatched under Parks and Wildlife Code, §61.060.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §65.19

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §65.19, concerning Hunting Deer with Dogs. House Bill 1959, enacted by the 79th Texas Legislature (Regular Session), added Parks and Wildlife Code, §62.0065, which stipulates that a person may not recklessly use a dog to hunt or pursue a deer in this state, and authorizes the Texas Parks and Wildlife Commission to prescribe by rule the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker counties. Penal Code, §6.03, states, for the purposes of establishing the culpability that the offense requires, that "a

person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint."

House Bill 1959 and rules adopted under the authority of H.B. 1959 are intended to provide an enforcement tool to deter the unlawful hunting of deer with dogs in East Texas counties where the activity has historically occurred and continues to be problematic.

In 1990 the department promulgated rules prohibiting the use of dogs to trail deer in Angelina, Bowie, Camp, Fannin, Franklin, Hardin, Harris, Harrison, Houston, Hunt, Jasper, Jefferson, Lamar, Liberty, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Walker, Washington, and Wood counties. At that time, hunters could use dogs to hunt deer for roughly half of the deer season, but for the other half of the season could only use dogs to trail wounded deer. The rulemaking was necessary because the department determined that dogs were being used unlawfully to hunt deer, and that in fact the use of dogs to hunt deer, even when it was lawful to do so, was causing depletion of the resource and in the process denying others an equitable and reasonable privilege to hunt deer. Department studies in 1989 indicated that deer populations were significantly smaller and sparser in areas where hunting with dogs was prevalent than in areas where hunting with dogs was not, that hunter success with dogs was greater than hunter success without dogs, and that hunting with dogs resulted in a higher crippling rate than hunting without dogs. Accordingly, the department's 1990 rulemaking was based on the department's statutory duty to prevent the depletion of deer populations and to provide for the most equitable and reasonable privilege to hunt (Parks and Wildlife Code, §61.055).

In 2000, Wildlife Division and Law Enforcement Division personnel determined that the practice of using dogs to hunt deer had declined to the point of being nonexistent in Bowie, Camp, Fannin, Franklin, Lamar, Morris, Red River, Rockwall, Titus, and Wood counties. In 2001, the department removed those counties from the list of counties where the use of dogs was prohibited to trail wounded deer. In a rulemaking earlier this year, the department also removed Hunt and Washington counties.

However, the problem remains endemic in 22 counties in East Texas, prompting the introduction and passage of House Bill 1959.

Under the terms of H.B. 1959, a person who violates the provisions of Parks and Wildlife Code, §62.0065, or a rule adopted under the authority of Parks and Wildlife Code, §62.0065, commits a Class A misdemeanor. Such violations are currently a Class C misdemeanor. Additionally, if a person has been previously convicted of a violation of Parks and Wildlife Code, §§62.003, 62.004, 62.005, 62.0065, or 62.011(c), a violation of Parks and Wildlife Code, §62.0065, or a rule adopted under the authority of Parks and Wildlife Code, §62.0065, is a state jail felony.

The amendment to §65.19 would prohibit the possession of a shotgun and shotgun slugs or buckshot by any person in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker counties while that person is in the field on the property of another during an open deer season and in actual or constructive possession of a dog. The amendment is necessary to curtail and, if possible, stop the practice of hunting deer with dogs. The amendment also defines the terms 'actual possession,' and 'constructive possession' for the sake of clarity.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of the state's wildlife resources (deer) from depletion, and to provide for the most equitable and reasonable privilege to hunt deer.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §62.0065, as added by House Bill 1959, 79th Texas Legislature, Regular Session, which authorizes the commission to prescribe the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker counties; Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by that chapter; and §61.055, which requires the commission to amend or revoke its proclamations to prevent depletion or waste and to provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life if the commission finds that there is a danger of depletion or waste.

The proposed amendment affects Parks and Wildlife Code, Chapters 61 and 62.

§65.19. Hunting Deer with Dogs.

(a) For the purposes of this section:

(1) 'actual possession of a dog' means the physical control of a dog;

(2) 'constructive possession of a dog' means having the power and intention to have and control a dog but without direct control of the dog, the actual presence of physical restraint upon the dog, or the actual presence of the dog at exactly the same place as the person having the dog.

(b) ~~[(a)]~~ It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(c) ~~[(b)]~~ It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker counties, where dogs shall not be used to trail wounded deer.

(d) In Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker counties, it is an offense for any person, during an open deer season, to be in the field on property belonging to another person while:

(1) in possession of a shotgun and buckshot or a slug; and

(2) in actual or constructive possession of a dog or dogs.

(3) The penalties for a violation of this section are prescribed by Parks and Wildlife Code, §62.013.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. EARLY CHILDHOOD INTERVENTION SERVICES

SUBCHAPTER F. SYSTEM OF FEES

40 TAC §108.293, §108.295

The Texas Health and Human Services Commission proposes a modification to Title 40, Part 2, §108.293 and §108.295, the rules of the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services, concerning the system of consumer fees entitled Family Cost Share. The change is being proposed to streamline the fee requirements for consumers.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for the first five-year period, the sections are in effect, there will be a minimal fiscal impact to state or local government which cannot be estimated.

Mr. Wheeler also estimates that for each year of the first five years the sections are in effect the public benefit anticipated as a result of changing the requirements will be that fewer families will withdraw their children from needed ECI services in reaction to the fees. There should be no material effect to small or micro businesses. There should be no material economic cost to persons who are required to comply with the modifications. In accordance with the Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rule changes will not effect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78751.

The amendments are proposed under the Government Code, Chapter 531, §531.0055 (e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§108.293. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) ~~Ability to Pay--~~The determination that the family is financially able to contribute to the cost of services provided by ECI based on the family's placement on the sliding fee scale. Placement on the scale at an amount greater than \$0 ~~[\$10 or above]~~ indicates an ability to pay.

(2) ~~[Actual cost of services--~~The cost of ECI services ~~planned or delivered each month based on the rates established by the Council.]~~

~~[(3)]~~ Adjusted Income--Gross family income, minus allowable expenses ~~[as described in §621.182(d)(3)(A) of this title (relating to Administration of Family Cost Share System);]~~ Adjusted income is used ~~, at the parent's request, instead of gross income to determine a family's ability to pay and cost share.~~

(3) ~~[(4)]~~ Allowable Expenses--Unreimbursed out-of-pocket ~~[Out-of-pocket]~~ expenses, including medical and dental expenses, that can be deducted from gross income, at the request of a parent, to calculate adjusted income for the purpose of determining a family's ability to pay and cost share.

~~[(5)]~~ Allowable Medical and Dental Expenses--Expenses may include health insurance premiums, deductibles and co-payments, dental and vision expenses, hospital expenses, prescriptions or supplements ordered by a physician, durable medical equipment, specialized clothing as required for a medical condition, medical transportation costs, and other expenses related to a medical condition or disability.]

(4) ~~[(6)]~~ CHIP--The Children's Health Insurance Program.

(5) ~~[(7)]~~ Family Cost Share ~~[or Family Fee]~~--The maximum amount of money the family must pay per month based on the family's ability to pay, considering the family's income, family size, ~~[allowable expenses and debts;]~~ and, when applicable, certain other factors as described in the rules.

(6) ~~[(8)]~~ Family--Group of individuals in the same household whose information is used to determine family size and income, including parents, adoptive parents, step-parents, and other children or adults with whom the child lives ~~[child(ren); and/or adult dependents].~~

(7) ~~[(9)]~~ Inability to pay--The determination that the family is not able to financially contribute to the cost of services provided by ECI. Placement on the sliding fee scale at \$0 indicates an inability to pay.

(8) ~~[(10)]~~ Gross Income--All income received by the family, from whatever source, which is considered to be income by the Internal Revenue Service but before federal allowable deductions are applied. ~~[Includes (but is not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; alimony and maintenance payments; annuities; income from life insurance and endowment contracts; pensions; and other sources.]~~ A family's gross income will be used to calculate the ~~[adjusted income and]~~ family cost share unless the parent requests an adjustment for allowable expenses.

~~[(11)]~~ Income verification--The process of reviewing family documentation of income, either by review at intake or by annual random sampling.]

~~[(12)]~~ Rate--The rate established by the Council used to calculate the actual cost of services on an IFSP. Rates will only be used to calculate the cost of services which are subject to fees.]

~~[(13)]~~ SSI--Supplemental Security Income]

(9) ~~[(14)]~~ Sliding ~~[Fee]~~ Scale--The scale of graduated family ~~[fees or]~~ cost share amounts developed by DARS-ECI ~~[adopted by the Council]~~ for use in determining the family's ability to pay and the maximum cost share a family receiving ECI services may be responsible for based on their income and family size.

~~[(15)]~~ TANF -- Temporary Aid for Needy Families]

(10) TriCare -- The Department of Defense managed care program for active duty military, and retirees and their families.

\$108.295. Administration of Family Cost Share System.

(a) ~~[By January 1, 2004, each]~~ Each ~~[each]~~ ECI program must implement the [a] family cost share system of sliding fees for all children enrolled in ECI comprehensive services in compliance with this subchapter and DARS-ECI [Council] policies and the contract.

(b) Prior to collection of income information or imposition of fees, parents must be fully informed of their right to receive certain ECI services at no cost, their right to refuse any services they do not wish to receive, their right to receive a review of ~~[have]~~ their cost share or amounts due ~~[reviewed]~~ by an administrator of the program on request, and their right to information about any [the] method the program may [will] use to verify family income and allowable expenses.

(c) Programs must ensure that the inability of a family to pay for services will not result in the delay or denial of services to the child or the family.

(d) Determination of family income. The program will calculate the family's ability to pay based on the family's ~~[gross]~~ income ~~[and adjusted income]~~ in the following manner:

(1) During the intake process and at each six month and annual IFSP review the program will collect information from the family regarding the family's gross income ~~[as defined in §621.181 of this title (relating to Definitions): For children currently enrolled in services for whom no annual review is scheduled prior to the effective date of the rule, the program must conduct the determination by January 1, 2004].~~

(2) The program may require verification of income from families based on written local policies [every family] or may rely on family self-report of income. ~~[For programs that rely on family self-report, verification must be conducted on 10% of enrolled families, selected randomly, by May 1st of each year to assure the program's use of self-report is accurate and effective.]~~

(A) [Sources of verification for income may include, but are not limited to:]

~~[(i)]~~ paycheck stubs from the two most recent pay periods;]

~~[(ii)]~~ the most recently filed Internal Revenue Service income tax form;]

~~[(iii)]~~ written verification from an employer;]

~~[(iv)]~~ other written documentation as determined by the program.]

~~[(B)]~~ Except as provided in subparagraph (B) of this paragraph, families [Families] with proof of enrollment in Medicaid [(if they do not also have private insurance)], CHIP, food stamps, SSI or TANF cash benefits for all children enrolled in ECI are automatically assumed to have an inability to pay and need not provide further information for family cost share determination [documentation or verification of income]. Children in the conservatorship of the State including children in foster care are automatically determined to have an inability to pay and need not provide further information for family cost share determination.

(B) ~~[(C)]~~ Families enrolled in Medicaid who have private insurance and consent to having their private insurance billed will be automatically assumed to have an inability to pay and need not provide further information for family cost share determination ~~[documentation or verification of income]~~, even if their private insurance denies all claims for coverage.

(C) ~~[(D)]~~ Enrollment of a child in a Medicaid waiver program is not deemed to be evidence of inability to pay if the family is not eligible for other Medicaid benefits.

(D) All children with auditory or visual disabilities who are eligible for a free and appropriate public education from birth under the Texas Education Code, Section 29.003(b)(1) are exempt from the cost share system. A note of the exemption shall be included on the Family Cost Share Agreement.

(3) Once the annual gross family income has been determined, the parents may request that their annual adjusted family income ~~[must]~~ be calculated by deducting allowable expenses from the gross income.

(A) Allowable expenses are those expenses expected to occur and/or be paid during the term of the IFSP and may include:

(i) Medical or dental expenses not reimbursed by insurance ~~[(excluding cosmetic or elective procedures)]~~ that the family incurred and which are expected to continue during the current IFSP period. [See definition of "allowable medical expenses" in §621.181 of this title.]

(ii) Payment toward outstanding medical or dental debt ~~[(excluding debt from cosmetic or elective procedures)]~~ .

(iii) Medical and/or dental expenses and debt may include those accrued by all family members.

(iv) Childcare and respite expenses not reimbursed by other sources, not to exceed \$500 per family per month.

(v) Costs and fees associated with the adoption of a child, not to exceed \$5000.

(vi) Court-ordered child support payments for children who are not counted as family members or dependents in calculating the adjusted income and family cost share.

(B) The program may require verification of expenses from families based on written local policies [every family] or may rely on family self-report of expenses. ~~[For programs that rely on family self-report, verification must be conducted on 10% of enrolled families, selected randomly, by May 1st of each year to assure the program's use of self-report is accurate and effective.]~~

~~[(C) Verification of expenses can be made by one of the following methods:]~~

~~[(i) bills, statements or receipts;]~~

~~[(ii) IRS claims for medical expense deductions;]~~

~~[(iii) doctor or hospital letters verifying balances and payments for the time period in question;]~~

~~[(iv) other written documentation as determined by the program.]~~

(4) Copies of income and/or expense documents need not be maintained by the program if an ECI employee reviews the documents and provides a written statement of verification, including a notation of the source of the documentation.

(5) A family who refuses to provide information for family cost share determination [documentation of their income and/or expenses] when requested by the program will be assessed as able to pay the highest cost share reflected on the sliding fee scale, ~~[or the actual cost of services planned on the IFSP, whichever is less,]~~ until such time as they submit the required information [income and/or expense documentation for verification]. Services required to be provided at no cost will not be denied or delayed if the family fails to provide income information.

(6) If the program reviews the family's request for deductions to gross family income due to allowable [verification of income and/or] expenses and finds [indicates] that adjustments to the cost share are warranted, the ~~[revised] cost share must be revised~~ [will take effect at the beginning of the next calendar month. The program will determine whether past charges or past payments will be adjusted].

(7) Income [With the exception of children in the conservatorship of the state in subsection (e)(4) of this section, adjusted income] is calculated based on income [and expenses] for all parents or guardians living in the same home with the child as a family. In situations where there is shared physical custody or shared legal or financial responsibility for a child, the adjusted income(s) of the parent(s) who financially supports the child will be considered unless conditions warrant otherwise.

(e) Determination of ability to pay and assignment of Family Cost Share.

(1) Using the sliding [fee] scale developed by DARS-ECI [adopted by the Council], the program will determine the family's assigned monthly cost share [after calculating adjusted income and family size. The family's monthly cost share will be the amount reflected on the chart that corresponds with the family's income (minus expenses) and family size, or the actual monthly cost of planned services on the IFSP, based on the rates established by the Council, whichever is less.]. The sliding fee scale can be obtained from DARS-ECI [the Council] at 4900 North Lamar Boulevard, Austin, Texas 78751-2399 or at www.dars.state.tx.us/ecis [www.eci.state.tx.us].

(2) Families with a family ~~[an adjusted]~~ income at or below 250 percent [200%] of the Federal Poverty Level ~~[(FPL)]~~ will have a family cost share of \$0 and are determined to have an inability to pay ~~[if all available third party resources deny coverage or reimbursement for ECI services, or the family is not eligible for any other financial assistance].~~

(3) Families enrolled in Medicaid who have private insurance and refuse to allow ECI to bill their private insurance, thereby preventing submission of Medicaid claims, will be assigned a monthly cost share of \$10 [the lowest cost share on the scale (\$10)].

~~[(4) When a child is living in a foster care placement or is in the conservatorship of the state, the family will automatically be assigned a cost share of \$0.]~~

(f) ~~[Assign costs to the] IFSP services.~~

(1) ~~[Programs will use the rates established by the Council to assign a cost to each planned service on a child's IFSP. The rates can be obtained from the Council at 4900 North Lamar Boulevard, Austin, Texas 78751-2399 or at www.eci.state.tx.us.]~~

~~[(2)] Those services that must be provided at no cost to the family are:~~

(A) Child find;

(B) Evaluation and Assessment;

(C) Development of the Individualized Family Service Plan;

(D) All services to children with auditory or visual disabilities eligible for a free and appropriate public education from birth under the Texas Education Code, §29.003 (b)(1);

(E) Service coordination;

(F) Translation and interpreter services; and

(G) Administrative and coordination activities related to the implementation of procedural safeguards and other components of the statewide system of early intervention services.

~~[(3)]~~ ~~[(3)] The monthly Family Cost Share is the maximum amount a family~~ [A fee] can be charged for all other services provided by ECI as part of an IFSP.

~~[(4)]~~ ~~[(4)] The state respite program funded with state discretionary funds is not subject to the cost share system.~~

~~[(5) The program must inform the family of the actual cost of planned services on the IFSP based on the rates established by the Council, regardless of the family's method of payment.]~~

~~[(6)]~~ ~~[(6)] A family will be responsible for the assigned monthly cost share unless no services, other than those listed in paragraph (1) of this subsection, were delivered in the month~~ [or the actual monthly cost of services delivered, whichever is less] .

~~[(7)]~~ ~~[(7)] The maximum monthly cost share for which the family will be responsible will be indicated on a Family Cost Share Agreement form that the family must sign.~~

~~[(8)]~~ ~~[(8)] For a family with an ability to pay, services included on the IFSP which are subject to cost share shall not be provided until the family signs the Family Cost Share Agreement.~~

~~[(9)]~~ ~~[(9)] Services included on the IFSP which are not subject to cost share shall begin immediately after the IFSP is developed.~~

(g) Review of family cost share.

(1) The family's ability to pay and cost share amount will be reviewed at the six month review and annual IFSP meeting, ~~[any time the amount of services on the IFSP subject to cost share is changed; any time the family's circumstances change or appear to have changed;]~~ or at any time the family requests a review, including immediately following initial assessment of ability to pay. ~~[Families must inform the program if they experience a significant change in their financial circumstances that may impact their assigned cost share.]~~ Programs may provide for a streamline review without completing a new Family Cost Share Agreement when there has been no change in family income or size since the previous review.

(2) ECI programs must develop a local process for a family to request reconsideration or adjustment of their assigned family cost share and/or to request a waiver of their cost share obligation, amounts currently due or overdue based on extraordinary circumstances, including amounts due based on denial of claims by a third-party payor as per subsection (h)(1)(A) of this section. Adjustments for allowable expenses should be made prior to the consideration of extraordinary expenses. Staff may initiate the review process when there is concern that the family of a child eligible for services will withdraw from services or decline to enroll in services if the cost share is not temporarily waived, and that the child may suffer harm as a result.

(A) The review should be conducted by the program director or designated administrator.

(B) Examples of circumstances that could justify a reconsideration or change of a family's assigned cost share, or that could justify a temporary waiver from their monthly cost share obligation or amounts currently due or overdue, could include but are not limited to:

- (i) increase or decrease in income, including loss of job or temporary unpaid leave from employment;
- (ii) short-term medical expenses not deducted during determination of adjusted income;
- (iii) extraordinary child care or respite expenses not deducted during the determination of adjusted income;
- (iv) additional dependants or change in family size;
- (v) catastrophic loss such as fire, flood or tornado;
- (vi) short-term financial hardship such as major repair to the family home or car; or
- (vii) other extenuating circumstances or financial obligations which the family feels are not adequately considered in the assessment of adjusted income, assigned monthly cost share, or their ability to meet their cost share in any particular month(s).

(C) Families may be asked to submit verification of such circumstances. Refusal to do so may result in denial of the cost share adjustment.

(3) If the program determines that adjustments to the cost share are warranted, the ~~[revised]~~ cost share shall be revised [will take effect at the beginning of the next month]. The Family Cost Share Agreement must be amended for any revision of the family cost share, and family signature must be obtained for the revised Family Cost Share Agreement.

(4) Families must be informed of the program's process for reviewing their family cost share amount before they are asked to sign the Family Cost Share Agreement.

(5) The family's last signed IFSP and Family Cost Share Agreement will remain in effect during any review process. For families without a signed Cost Share Agreement, the services included on

the IFSP which are not subject to cost share shall begin or continue during any period of review.

(h) Children with Insurance. ~~[Billing for services.]~~

(1) Third-party payors.

(A) With parent consent, programs must bill Medicaid, CHIP, TriCare and private insurance or other third-party payors for covered services delivered according to the IFSP. To allow the local program to establish insurance billing, in the initial six months of service, family cost share shall be set at \$0 as long as the child maintains insurance coverage and the parent continues to provide the program with consent to bill the insurance for ECI services. After the initial six months, third-party [Third-party] reimbursement of any IFSP service(s) will satisfy the family's cost share obligation for the month the service(s) was delivered. If the third-party payor completely denies coverage for IFSP services subject to fees, the family will be responsible for the assigned cost share ~~[amount or the actual cost of services delivered, whichever is less]~~.

(B) Any applicable insurance co-payments for services may [will] be paid with ECI federal funds.

(2) Billing families for services.

(A) Programs must bill the family for the assigned cost share ~~[or the actual cost of the services delivered, whichever is less]~~.

(B) The assigned family cost share is the maximum amount to be billed to the family regardless of the number of children in the family receiving services from ECI.

(3) Payment and Non-Payment of Fees.

(A) Families will have 30 days from the billing date to pay their family cost share ~~[or consent to have a claim submitted for payment from private insurance or other third-party payors.]~~ All unpaid balances due from the family after 30 days will be considered delinquent unless the delay in payment is due to a delay in third-party reimbursement or notice of denial of a claim from a private or public third-party payor.

(B) Services subject to cost share will be suspended after 90 days for non-payment of family cost share. For families consenting to payment by third-party payors, the 90-day time period will begin when notice is first received that the third-party payor has denied all claims for reimbursement and all appeals are exhausted, if applicable. Partial reimbursement by a third-party payor will satisfy the family's cost share obligation for the month, as per paragraph (1)(A) of this subsection.

(C) Families must be notified that failure to maintain their cost share account in good standing will, after 90 days, result in the suspension of IFSP services that are subject to family cost share [fees], and that if services are later reinstated, the program cannot guarantee that they will be reinstated on the same schedule or with the same individual service provider as prior to suspension.

(D) Service Coordination and other services not subject to family cost share [fees] must be continued during any period of suspension, except that respite vouchers may be denied for payment during a period of suspension.

(E) A notation must be made on the Family Cost Share Agreement that services subject to family cost share [fees] have been suspended due to non-payment. If a family transfers between Texas ECI programs, the Family Cost Share Agreement will be transferred to the receiving ECI program along with the IFSP.

(F) Services that have been suspended will be reinstated when the family's account is paid in full or the family negotiates an acceptable payment plan with the local program. If more than six months have transpired since suspension, the IFSP team must reassess the appropriateness of the IFSP before reinstating services. The IFSP and the Family Cost Share Agreement should reflect the date of the reinstatement of services.

(G) Programs must have a written local policy [process] for collecting delinquent family cost share [fees]. Documentation must be kept of reasonable attempts to collect on unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification and/or e-mail.

[(H) The family cost share review policy established according to subsection (g) of this section must include a provision allowing the]The Program Director or Administrator may [to] modify a family's payment plan or cost share if circumstances warrant.

(i) Program fiscal and record-keeping policies.

(1) [All revenues generated by family cost sharing will be collected by the program.]

[(A)] Revenue received from the family cost share may only be used for early intervention services within the ECI program and may not supplant any other local fund sources.

[(B)] Fees collected must be reported to the ECI state office as program income.

(2) The Family Cost Share Agreement and any financial records related to [verification of] income, expenses, and payment history shall be kept separate from the child's other educational records, and should not be forwarded to a school district or other non-ECI service provider(s) at any time unless requested by the family. All financial records must be maintained in a manner consistent with Family Educational Rights and Privacy Act.

(3) The Family Cost Share Agreement and financial records must be transferred to another ECI program in the state if the child and family transfer to another ECI program.

(4) The Family Cost Share Agreement and financial records are subject to subpoena, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 8, 2005.

TRD-200502764

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: August 21, 2005

For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1017

The Texas Education Agency withdraws proposed new §61.1017 which appeared in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1215).

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502815

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: July 11, 2005

For further information, please call: (512) 475-1497

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

The Office of the Attorney General (OAG) adopts amendments to §§60.1 - 60.3, 60.5, 60.6, and 60.9 - 60.13 (Subchapter A, General Provisions and Eligibility), §§60.101 - 60.103 (Subchapter B, Application Review and Award Process), §§60.201, 60.202, 60.204, 60.205, and 60.208 (Subchapter C, Grant Budget Requirements), §60.301 (Subchapter D, Required Attachments), and §§60.405, 60.408, and 60.409 (Subchapter E, Administering Grants), and adopts new §60.209 (Subchapter C, Grant Budget Requirements), relating to rules governing the Texas Crime Victim Services Grant Programs. The amendments and new rule are adopted without changes to the proposed text as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3373) and will not be republished.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Subsection (f) of the Article requires the OAG to adopt rules necessary to carrying out the Article's provisions.

The adopted amendments and new rule accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section §60.1 corrects a punctuation error in paragraph (6). Section 60.2 allows for the rules to be suspended at the discretion of the OAG. Section 60.3 changes the "CVC fund" to the "Texas Compensation to Victims of Crime Fund." Section 60.5 enumerates the purposes of the OVAG and VCLG funds. Section 60.6 lists eligible purpose areas of OVAG funds. Section 60.9 enumerates eligible budget categories for both the OVAG and VCLG programs. Section 60.10 provides funding levels and requirements for local and statewide programs under both the OVAG and VCLG programs. Section 60.11 sets out the applicable grant term. Section 60.12 makes clear that continued funding is subject to a renewal by the OAG. Section 60.13 describes the OAG's

authority to fund grant projects outside the standard application cycle.

Section 60.101 states that the OAG shall determine the process for making funding decisions. Section 60.102 describes how an applicant will be notified of an award and requires an applicant to accept or reject the award within a certain time period. Section 60.103 states that all funding decisions made by the OAG are final.

Section 60.201 lists the requirements for the personnel budget category. Section 60.202 describes the fringe benefits allowed under the grant. Section 60.204 adds that grant funds may not be used for out-of-state travel. Section 60.205 has been modified to reflect the current provisions of the Uniform Grant Management Standards, published by the Governor's Office of Budget and Planning. Section 60.208 defines indirect costs.

Section 60.301 requires that a resolution be included with the application.

Section 60.405 places specific requirements on a grantee making a grant adjustment. Section 60.408 outlines the process for maintenance of records. Section 60.409 provides for a written request within 10 days of receipt of a notice of sanction.

Section §60.209 outlines unallowable costs.

No comments were received regarding the amendments and the new rule.

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§60.1 - 60.3, 60.5, 60.6, 60.9 - 60.13

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502791

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: July 31, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 463-2110



SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

1 TAC §§60.101 - 60.103

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502792

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: July 31, 2005
Proposal publication date: June 10, 2005
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SUBCHAPTER C. GRANT BUDGET REQUIREMENTS

1 TAC §§60.201, 60.202, 60.204, 60.205, 60.208

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502793

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: July 31, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 463-2110



1 TAC §60.209

The new rule is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The new rule affects Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502796

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: July 31, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 463-2110



SUBCHAPTER D. REQUIRED ATTACH- MENTS

1 TAC §60.301

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502794

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: July 31, 2005
Proposal publication date: June 10, 2005
For further information, please call: (512) 463-2110



SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§60.405, 60.408, 60.409

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502795

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Effective date: July 31, 2005

Proposal publication date: June 10, 2005

For further information, please call: (512) 463-2110



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER E. REGULATED HERBICIDES

4 TAC §7.52, §7.53

The Texas Department of Agriculture (the department) adopts amendments to §7.52 concerning counties regulated and §7.53 concerning county special provisions for the use of regulated herbicides, without changes to the proposal published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 783). The amendments are adopted to make changes to the regulations necessitated by an order entered by the county commissioners court of a county subject to the regulations.

The amendment to §7.52 will add Moore County to the list of counties regulated. The amendment to §7.53 will make changes to the county special provisions by adding county special provisions for Moore County.

No comments were received on the proposal.

The amendments to §7.52 and §7.53 are adopted under the Texas Agriculture Code (the Code) §76.144, which provides the department with the authority to adopt rules concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with the Code §76.144(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2005.

TRD-200502738

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: July 25, 2005

Proposal publication date: February 18, 2005

For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 92. INTERAGENCY COORDINATION

SUBCHAPTER AA. MEMORANDA OF UNDERSTANDING

19 TAC §92.1001, §92.1003

The Texas Education Agency (TEA) adopts the repeal of §92.1001 and §92.1003, concerning memoranda of understanding. The repeals are adopted without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2647) and will not be republished. Section 92.1001 adopts by rule the memorandum of understanding for coordinated services to children and youth. Section 92.1003 adopts by rule the memorandum of understanding concerning the Communities In Schools program. The repeals are necessary because of changes in authorizing statutes.

The 71st Texas Legislature, 1989, passed Senate Bill 298, the original legislation that authorized a system of community resource coordination groups to coordinate services for children and youth. The commissioner of education exercised rulemaking authority to adopt 19 TAC §92.1001, Memorandum of Understanding for Coordinated Services to Children and Youth, effective October 5, 1998. The 77th Texas Legislature, 2001, passed Senate Bill 1468, legislation for coordinated services to children and youth that no longer mandates the memorandum of understanding (MOU) to be adopted by rule. Accordingly, this item adopts the repeal of 19 TAC §92.1001.

The Texas Family Code, Chapter 264, passed by the 76th Texas Legislature, 1999, required the TEA and the Texas Department of Protective and Regulatory Services (DPRS) to adopt an MOU into rule. The current commissioner rule, 19 TAC §92.1003, Memorandum of Understanding Concerning the Communities In Schools Program, was adopted to be effective October 1, 2000. The 78th Texas Legislature, 2003, passed Senate Bill 1038, transferring provisions of the Texas Family Code, Chapter 264, Subchapter I, to the Texas Education Code, Chapter 33, Subchapter E. The transfer of the Texas Family Code to the Texas Education Code transferred the Communities In Schools (CIS) program from the Department of Family and Protective Services (DFPS), formerly known as the DPRS, to the TEA. The current MOU between the TEA and the DPRS is no longer applicable. Accordingly, this item adopts the repeal of 19 TAC §92.1003.

Senate Bill 1038 specified that on September 1, 2003, a reference in law or administrative rule to the DPRS that relates to the CIS program means the TEA and that a reference in law or administrative rule of the executive director of the DPRS that

relates to the CIS program means the commissioner of education. The legislation also stated that a rule of the DPRS relating to the CIS program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. Accordingly, the commissioner of education has proceeded with the rulemaking process to adopt provisions for the CIS. The adoption of new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning Communities In Schools Program, was filed on June 14, 2005. These new rules took effect on July 4, 2005.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Senate Bill 1468, 77th Texas Legislature, 2001, which no longer mandates that an MOU relating to coordinated services to children and youth be adopted by rule and Senate Bill 1038, 78th Texas Legislature, 2003, which transferred the Communities In Schools program to the TEA.

The repeals implement Senate Bill 1468, 77th Texas Legislature, 2001, and Senate Bill 1038, 78th Texas Legislature, 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2005.

TRD-200502817

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: July 31, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.9, Application, without changes to the proposed text as published in the January 7, 2005, issue of the *Texas Register* (30 TexReg 16) and will not be republished.

The adopted amendment removes the notary requirement from all TALCB forms previously adopted by reference and revises the form title and number. The Application for Provisional Appraiser License, TALCB Form APL 2-0 (804) and Appraisal Experience Explanation, TALCB Form AEE 6A-0 (804) are also now adopted by reference.

No written comments were received regarding adoption of the amendments.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties

(Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2005.

TRD-200502737

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: July 25, 2005

Proposal publication date: January 7, 2005

For further information, please call: (512) 465-3950

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 597. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

22 TAC §597.1

The Texas Structural Pest Control Board adopts an amendment to §597.1 concerning Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses with no changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2023).

Justification for the rule is that the adoption reflects the codification of the Structural Pest Control Act into the Occupations Code, makes certain grammatical changes and clarifies the requirements of certain portions of this regulation for recordkeeping.

The rule will function in reflecting the correct statutory language and letting licensees know the record keeping requirements.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2005.

TRD-200502739

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: July 26, 2005

Proposal publication date: April 8, 2005

For further information, please call: (512) 305-8270

22 TAC §597.3

The Texas Structural Pest Control Board adopts an amendment to §597.3 concerning Unlawful Acts without changes to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2024).

Justification for the rule is that the adoption reflects the codification of the Structural Pest Control Act into the Occupations Code.

The rule will function in reflecting the correct statutory language.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2005.

TRD-200502740

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Effective date: July 26, 2005

Proposal publication date: April 8, 2005

For further information, please call: (512) 305-8270



TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.2

The Texas County and District Retirement System adopts amended rule §101.2, concerning the scope and application of the rules adopted under Part 5 of Title 34, Texas Administrative Code. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3006).

This amendment states the equitable authority granted by the board to the director to suspend, modify, or grant an exception to the operation of a rule in an individual case in the interest of fairness and equity, and limits the application of the director's decision to that case only. The authority may not be used to enlarge or diminish any substantive rights or powers, and may not be exercised in a manner that would cause harm or injury to the system or any other party, or that would be impermissible for a qualified plan under §401(a) of the Internal Revenue Code. Under the amended rule, it clearly specifies the director's authority to grant equitable relief from the application of a rule in appropriate cases to avoid undue hardships, and the limits and effects of the exercise of that authority.

The rule provides the availability of equitable relief from the harshness of a rule when appropriate in individual cases.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502747

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: July 27, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230



CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.2

The Texas County and District Retirement System adopts amended rule §103.2, concerning the optional benefit forms that may be selected by the retiree. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3007). Under the amended rule, the statutory changes made to the available optional benefit forms and the order of distribution of unrecovered contributions are appropriately reflected. As reflected in the amendment, retirees may select the optional 100% joint and survivor annuity with a 'pop-up' feature that increases the monthly annuity amount to the standard benefit if the designated beneficiary predeceases the retiree. The 25% joint and survivor annuity option has been replaced by the new option. This rule also references the statutory section which sets forth the order of distribution of unrecovered contributions in the event the retirement annuity terminates before the balance of the member's account has been totally recovered.

The rule appropriately reflects the statutory changes made to the available optional benefit forms and the order of distribution of unrecovered contributions.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502748

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: July 27, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230

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34 TAC §103.6

The Texas County and District Retirement System adopts amended rule §103.6, concerning the inclusion in the retirement benefit calculation of those deposits received after the effective retirement date. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3007). Under the amended rule, it establishes a 60-day period in which post-retirement deposits must be received by the system so that they may be included in the calculation of benefit. A 60-day window is reasonable period for an employer to determine and submit employee contributions attributable to the retiree's final regular pay period and payments for unused vacation and sick leave. Recalculations of annuities resulting from deposits received later than 60 days after the effective retirement date are disruptive to the efficient administrative operation of the system. Recalculations may still be made for additional deposits received after the 60-day window as a result of the correction of a reporting error.

The rule supports the efficient administration of the system by encouraging employers to be diligent in timely delivering to the system all required contributions and information.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502749

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: July 27, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230

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34 TAC §103.7

The Texas County and District Retirement System adopts amended rule §103.7, concerning the restoration of service credits pursuant to a subdivision's order under Government Code §843.003. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3008). Under the amended rule, a member is required to make the payment on or before December 15, for crediting to the member's account on the following January 1. A member has sufficient time (eleven and one-half months) during the year to submit the payment so that it will be included in the following January 1 opening account balance for the crediting of interest. If the payment is received by the system after December 15, the deposit will not be treated as accumulated contributions for the crediting of interest at year's end until the next following January 1. The mid-December cutoff for crediting the payment is necessary because of the heavy

volume of end-of-year processing for refunds, retirements and subdivision change orders.

The rule supports the efficient administration of the system by encouraging eligible members to deposit payments for restoring forfeited service credits well before the last day of the year in order that the payment may receive an allocation of interest as soon as possible.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502750

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: July 27, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.2

The Texas County and District Retirement System adopts new rule §107.2, concerning the payment by members to purchase forfeited service credits in accordance with Government Code §843.0031. This new rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3009).

This section of the code authorizes a current member who has forfeited benefits by previously withdrawing the member's individual account to pay to the system for deposit to the member's account, a lump sum in any amount that does not exceed the actuarial present value of the benefits that would be attributable to the withdrawn amount. The payment, which can be made at any time during employment, will be deposited to the member's individual account as accumulated contributions for crediting with interest in accordance with the TCDRS Act. However, the payment and all accumulated interest relative to the payment are excluded from the determination of the member's current service credit and multiple matching credits. To be credited with interest under the TCDRS Act for a specific year, the payment must be included in the member's opening account balance on January 1 of that year. Under the new rule, a member is required to make the payment on or before December 15 for crediting to the member's account on the following January 1. If the payment is received by the system after December 15, the deposit will not be treated as accumulated contributions for the crediting of interest until the next following January 1. The mid-December cutoff for crediting the payment is necessary because of the heavy volume of end-of-year processing for refunds, retirements and subdivision change orders.

The rule supports the efficient administration of the system by encouraging eligible members to deposit payments for restoring

forfeited service credits well before the last day of the year in order that the payment may receive an allocation of interest as soon as possible.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502751

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: July 27, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230



34 TAC §107.5

The Texas County and District Retirement System adopts amended rule §107.5, concerning the termination of membership resulting from the withdrawal of all accumulated contributions by a member, and the cancellation of a withdrawal application and reinstatement of accounts. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3010). Under the amended rule, the date of membership termination and closing of accounts based upon a withdrawal is the date shown on the first check the system sends or causes to be sent as payment of any portion of the member's accumulated contributions.

The rule supports the efficient administration of the system by requiring a member who timely chooses to cancel the withdrawal to return to the system the uncashed check or checks rather than merely repaying the withdrawn amount. The amendment avoids the exceptions and special handling associated with personal checks, establishes a certain and identifiable date for the termination of accounts, and stills allows relief to diligent members who timely act to rescind their previous actions.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2005.

TRD-200502752

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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Proposal publication date: May 20, 2005

For further information, please call: (512) 637-3230



CHAPTER 109. DOMESTIC RELATIONS ORDERS

34 TAC §109.12

The Texas County and District Retirement System adopts amended rule §109.12, concerning the form and timing of payments to alternate payees pursuant to a qualified domestic relations order. This amended rule is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3011). Under the amended rule, the manner of payment of the interest awarded to the alternate payee in those cases where the qualified domestic relations order is received after the participant or participant's beneficiary has begun to receive a dual-life retirement annuity and the alternate payee was not the beneficiary-annuitant is described. Additionally, the amendment describes the authority to initiate payment of the interest awarded to the alternate payee in cases where the underlying membership has terminated and the person entitled to apply for the former member's benefit fails to do so. Lastly, the amendment defines and expands the authority and circumstances under which the system may pay the alternate payee the lump sum actuarial equivalent of the interest awarded to the alternate payee that would otherwise be payable in the form of a single life annuity. As non-substantive modifications, the amendment also makes minor clarifying changes to the grammar and style of the rule.

The rule supports the efficient administration of the system in making payments under terminated memberships, making a single payment of certain benefits in the form of lump sums thereby eliminating the costs associated with the on-going administration of life annuities of small monthly amounts, and making available to the divorcing parties distribution options that are more flexible and appropriate to individual circumstances.

No comments were received regarding adoption of this rule.

The rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER C. AMBER ALERT NETWORK FOR ABDUCTED CHILDREN

37 TAC §§9.21 - 9.24

The Texas Department of Public Safety adopts new Subchapter C, §§9.21 - 9.24, concerning the Amber Alert Network For Abducted Children, without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3012).

Adoption of the new sections is necessary in order to promulgate the policies and procedures of the Texas Department of Public Safety (DPS) governing the statewide coordination of the Amber Alert Network activation and deactivation in order to maintain a high level of effectiveness. The new sections further fully implement Tex. S.B. 57, Acts 2003, 78th Leg., R.S., ch. 789, §1.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government code, §411.353(b), which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert system with the rules and directive to include instructions on the procedures for activating and deactivating the alert system; and Texas Government Code, §411.353(c), which requires the director to prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.5

The Texas Commission on Fire Protection (TCFP) adopts an amendment to Chapter 437, §437.5, Renewal Fees. The amendment is adopted with changes to the proposed text published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3085). The change is the addition of a new subsection

(q) which addresses those situations in which an individual is returning to the fire service after activation to military service, and finds that his or her certification has expired. The added provision requires those individuals to notify the commission in writing of their return, and pay a \$25 renewal fee, but waives any associated late fees.

The purpose of the adopted amendment to subsection (a) is to implement a \$5.00 increase in the fee charged to renew certifications for certified individuals and certified training facilities, making the renewal fee \$25 instead of \$20. This increase will enable the TCFP to maintain current levels of regulatory oversight of the certification of fire service personnel (mandated by Texas Government Code, §419.026) which would be in jeopardy due to proposed budget cuts. The purpose of the new subsection (q) is to clarify the procedure to be followed when an individual returns to the fire service after activation to military service to find his or her certification has expired, and to assure that those individuals who are serving their country are not penalized with the late fees normally associated with failure to renew a certification.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b) and §419.026(a).

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the TCFP with authority to set and collect a fee of not more than \$35 for each certificate that the TCFP issues or renews.

Texas Government Code, §419.008 and §419.026 are affected by this rulemaking.

§437.5. *Renewal Fees.*

(a) A \$25 non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the commission may collect only one \$25 renewal fee which will renew all certificates held by the individual or certified training facility.

(b) Renewal fees shall not be combined with other fees, such as certification fees, fees for commission manuals, and copying fees.

(c) A regulated employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.

(d) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(e) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity, as defined in subsection (c) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for which he or she continues to qualify, will be renewed.

(f) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.

(g) Certification renewal statements will be mailed to all regulated employing entities at least 60 days prior to October 31 of each calendar year. Certification renewal statements will be mailed to certified training facilities at least 60 days prior to February 1 of each calendar year. Certification renewal statements will be mailed to individuals holding certification at least 60 days prior to April 30 of each calendar year.

(h) All certification renewal fees must be returned with the renewal statement to the commission.

(i) All certification renewal fees must be paid on or before the renewal date posted on the certification renewal statement to avoid additional fee(s).

(j) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31. The certification period of Individual certificate holders is May 1 to April 30.

(k) Individual certificate holders that possess a certification that expires on October 31 will receive a renewal statement during the regulated entity's renewal cycle for a six month renewal period to align that individual to the individual holding certification renewal cycle as defined in subsection (j) of this section.

(l) A regulated entity that hires an individual holding certification that is current and has a renewal expiration date of April 30 will receive a renewal statement during the individual holding certification renewal cycle to align the renewal period as defined in subsection (j) of this section.

(m) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable \$10 late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(n) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable \$20 late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(o) In addition to any non-refundable late fee(s) assessed for certification renewal, the commission may hold an informal conference to determine, if any, further action(s) are to be taken.

(p) An individual or entity may petition the commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(q) An individual, upon returning from activation to military service, whose certification has expired, must notify the commission

in writing. The individual will have any normally associated late fees waived and will be required to pay a \$25 renewal fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.21

The Texas Commission on Fire Protection (TCFP) adopts new §441.21, concerning continuing education for fire service instructors, in Chapter 441, entitled Continuing Education. The new rule is adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1618) and will not be republished. The purpose of the new rule is to set out requirements for continuing education for instructors, thereby assuring that fire service instructors in the state will continue to enhance their knowledge and skills in the various aspects of fire science.

New rule §441.21 requires those individuals holding instructor certification to complete annual continuing education hours to maintain their certifications. The rule provides that subjects selected to meet fire instructor certification continuing education requirements may be selected from either Track A or Track B, or a combination of the two.

The TCFP has determined the new rule to be in compliance with Texas Government Code, §419.022(b).

No comments were received regarding the proposed new rule.

The new rule is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Commission on Fire Protection
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER B. INTEREST LISTS

40 TAC §48.1301

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §48.1301, concerning interest lists, in Chapter 48, governing Community Care for Aged and Disabled, with changes to the proposed text published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2169).

The new section is adopted to comply with Human Resources Code, §22.040, which requires DADS to develop and implement a plan to assist elderly persons or persons with disabilities who request a community care service to receive that service as quickly as possible when the service becomes available. The new rule establishes a procedure for assisting a person who inquires about a DADS community care service and for contacting a person on the interest list when DADS forecasts that the service will become available. For the purpose of this rule, "a DADS community care service" means a service provided under the Community Based Alternatives (CBA) Program, the Community Living Assistance and Support Services (CLASS) Program, or the Medically Dependent Children Program (MDCP).

DADS received no comments regarding adoption of the new section.

Changes have been made to §48.1301 because the terms "elderly person" and "person with a disability" are not necessary for this rule. For the process described in the rule--receiving information about available services, applying for available services, and placing a person's name on an interest list--a person does not have to meet a particular definition of elderly or disabled; eligibility determinations are made later in the enrollment process. Therefore, references to "elderly person" and "person with a disability" have been deleted.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; Texas Human Resources Code,

§22.040, which requires DADS to develop and implement a plan to assist elderly persons or persons with disabilities who request community care services to receive those services as quickly as possible when the services become available; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§48.1301. Interest Lists.

(a) The purpose of this section is to assist a person to access a Department of Aging and Disability Services (DADS) community care service as soon as possible after the service becomes available. For purposes of this subchapter, a "DADS community care service" or "service" is a service provided under:

- (1) the Community Based Alternatives (CBA) Program;
- (2) the Community Living Assistance and Support Services (CLASS) Program; or
- (3) the Medically Dependent Children Program (MDCP).

(b) A person may contact a DADS office or a designated telephone number to inquire about a DADS community care service. DADS assists the person in deciding which service may be appropriate for the person or another person on whose behalf the inquiry is made.

(1) If the person wants to apply for a service that is available at the time of the inquiry, DADS assists the person in making an application, if necessary. DADS processes the application in accordance with the rules governing that service.

(2) If the person wants to apply for a service that is not available at the time of the inquiry, DADS places the person's name on an interest list for the service. A person's name is placed on the interest list in chronological order by the date DADS received the person's name, address, and contact information.

(c) During each fiscal-year quarter, DADS forecasts whether a service will become available during the next quarter. If DADS forecasts that the service will be available, DADS also estimates the number of persons that DADS will be able to enroll into the service during the next quarter.

(d) DADS contacts a person who, based on the position of the person's name on the interest list, might be enrolled into the service during the next quarter.

(1) If the person wants to apply for the service, DADS begins the service eligibility determination process in accordance with the rules governing that service at least 30 days before the service is forecast to be available.

(2) If the person is no longer interested in applying for the service or is determined ineligible for the service, DADS removes the name of the person from the interest list.

(e) DADS continues to contact persons on the interest list until the number of persons estimated under subsection (c) of this section has been enrolled into the service.

(f) DADS does not provide a DADS community care service to a person until the service is actually available.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502763



CHAPTER 51. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeals of §§51.1-51.5, 51.7, 51.31, and 51.39; and adopts new §§51.101, 51.103, 51.201, 51.203, 51.205, 51.207, 51.211, 51.213, 51.215, 51.217, 51.219, 51.221, 51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243, 51.251, 51.301, 51.303, 51.305, 51.307, 51.309, 51.321, 51.323, 51.325, 51.327, 51.329, 51.331, 51.401, 51.403, 51.405, 51.407, 51.411, 51.413, 51.415, 51.417, 51.419, 51.421, 51.431, 51.433, 51.441, 51.451, 51.461, 51.463, 51.465, 51.471, 51.473, 51.475, 51.477, 51.479, 51.501, 51.503, 51.505, 51.507, 51.509, 51.511, 51.513, and 51.515, in Chapter 51, governing the Medically Dependent Children Program (MDCP). New §§51.419, 51.421, 51.503, and 51.515 are adopted with changes to the proposed text published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2170). The repeals of §§51.1-51.5, 51.7, 51.31, and 51.39; and new §§51.101, 51.103, 51.201, 51.203, 51.205, 51.207, 51.211, 51.213, 51.215, 51.217, 51.219, 51.221, 51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243, 51.251, 51.301, 51.303, 51.305, 51.307, 51.309, 51.321, 51.323, 51.325, 51.327, 51.329, 51.331, 51.401, 51.403, 51.405, 51.407, 51.411, 51.413, 51.415, 51.417, 51.431, 51.433, 51.441, 51.451, 51.461, 51.463, 51.465, 51.471, 51.473, 51.475, 51.477, 51.479, 51.501, 51.505, 51.507, 51.509, 51.511, and 51.513 are adopted without changes to the proposed text.

The current rules are repealed and new rules are adopted so that the rules will be better organized and easier for the public, including individuals and providers, to locate and understand. The new rules govern eligibility, the enrollment process, individual responsibilities, and provider requirements under MDCP. New definitions were included to provide clarity to the meaning of terms used in the rules. References to the Texas Department of Human Services were replaced with references to DADS or to HHSC, as appropriate, to ensure that the new rules reflect changes resulting from the consolidation of health and human services agencies in 2004. At the request of providers, the new rules offer greater flexibility in the provision of information; rather than require that providers use specific DADS forms, the new rules give specific elements that must be included when providers give information to DADS. Rules concerning transition assistance services and the consumer directed services option were added as a result of those services being approved by the Centers for Medicare and Medicaid Services as part of the service array under MDCP.

DADS received six oral comments from the Texas Association for Health Care, Advocacy, Inc., and the Texas Center for Disability Studies. A summary of each comment and the responses follow.

Comment: Concerning §51.419(b), one commenter asked that paragraph (2) of subsection (b), which would allow a provider to

suspend services to an individual if the individual refuses to follow the practitioner's orders, be removed. A situation could arise in which the individual or the individual's parent or guardian observes that the medication or treatment ordered by a practitioner was not working. The rule should not allow an agency to suspend services if the individual stopped following the practitioner's orders while waiting for new orders.

Response: The agency agrees that a situation such as the one given by the commenter, or a similar situation, could arise and that the rule language should not allow for an agency to suspend services if the individual refuses to follow the practitioner's orders. The requested language was deleted from §51.419(b) in response to the comment.

Comment: One commenter was concerned that the notification period for service suspensions in §51.419(c) is five days instead of the seven days currently called for in the provider manual.

Response: The agency wants to keep the time frame for notification of service suspensions consistent with its other rules and policies, including the licensing standards for home and community support services agencies in 40 TAC Chapter 97. The rule language was not changed in response to this comment.

Comment: Concerning §51.421(a), one commenter asked that the agency encourage a home and community support services agency (HCSSA) provider to hire an attendant whom the individual has selected by changing the phrase "may hire that attendant" to "must make a good faith effort to hire that attendant."

Response: The decision was made, after discussion with provider and advocacy groups regarding this comment, to leave the rule unchanged from the proposal. Providers were concerned about potential administrative burdens the suggested change might impose, while advocates thought the change would help promote a philosophy of individual self-determination. The agency agrees that the change may impose additional administrative burdens and did not change the rule in response to the comment. However, DADS will consider alternative ways and a variety of approaches to promote a philosophy of individual self-determination throughout its programs.

Comment: One commenter asked that the agency remove the prohibition in §51.421(b) against a provider hiring a person who lives in the individual's residence as an attendant, because that language would prohibit someone such as a sibling over the age of 18 from serving as the individual's attendant.

Response: The intent of the proposed rule was to prohibit a person who is legally responsible for caring for an individual from being hired as the individual's attendant. Therefore, the agency agrees to remove the requested language but has added the managing conservator of the individual if the individual is under age 18 and the individual's spouse as persons who must not be hired as an attendant.

Comment: Concerning §51.503(b), one commenter stated that requiring the provider to document the funding sources used to deliver services in the in-home record is not feasible, because the nurse or the attendant who documents services for the in-home record will not know the funding source for the services provided. The provider keeps that documentation in the billing records.

Response: The agency agrees with this comment and moved the requirement to document funding sources from §51.503(b), concerning the in-home record, to §51.515(b), concerning record keeping.

Comment: Concerning §51.511(3), one commenter wanted to make sure that the cost of a building permit is allowed as a billable item for a minor home modification.

Response: The agency affirms that the cost of a building permit is an allowable cost that the provider includes in its bid for the total cost of the minor home modification. No change in the rule is needed in response to this comment.

In addition, a minor editorial change was made to the text of §51.419(a) to clarify and improve the accuracy of the section.

40 TAC §§51.1 - 51.5, 51.7, 51.31, 51.39

The repeals are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

SUBCHAPTER A. INTRODUCTION

40 TAC §§51.101, §51.103

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES DIVISION 1. ELIGIBILITY

40 TAC §§51.201, 51.203, 51.205, 51.207

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Phoebe Knauer

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Department of Aging and Disability Services

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DIVISION 2. ENROLLMENT

40 TAC §§51.211, 51.213, 51.215, 51.217, 51.219, 51.221

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery

of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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DIVISION 3. SERVICES

40 TAC §§51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Phoebe Knauer

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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DIVISION 4. APPEALS

40 TAC §51.251

The new section is adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services

Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RESPONSIBILITIES OF THE INDIVIDUAL IN SECURING ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS

DIVISION 1. ADAPTIVE AIDS

40 TAC §§51.301, 51.303, 51.305, 51.307, 51.309

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§51.321, 51.323, 51.325, 51.327, 51.329, 51.331

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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SUBCHAPTER D. PROVIDER REQUIREMENTS

DIVISION 1. CONTRACTING REQUIREMENTS

40 TAC §§51.401, 51.403, 51.405, 51.407

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

40 TAC §§51.411, 51.413, 51.415, 51.417, 51.419

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§51.419. Service Suspensions.

(a) Required service suspensions. A provider must suspend services to an individual if or when:

(1) the individual is admitted for purposes other than respite services to:

(A) a hospital (if the services are provided by an RN or an LVN);

(B) a nursing facility (if the services are provided by an RN or an LVN);

(C) a state mental retardation facility;

(D) a state mental health facility;

(E) a rehabilitation hospital; or

(F) an intermediate care facility for persons with mental retardation or related conditions; or

(2) someone in the individual's residence exhibits reckless behavior that may result in imminent danger to the health and safety of the individual, the provider, or another person. If this occurs the provider must make an immediate referral to:

(A) DFPS or other appropriate protective services agency;

(B) local law enforcement; and

(C) the case manager.

(b) Other service suspensions. A provider may suspend services to an individual if the individual or someone in the individual's residence discriminates against a provider or a DADS employee.

(c) Notification of service suspension. The provider must notify the case manager orally or by fax about a service suspension no later than one working day after services are suspended. If the

provider's notification is oral, the provider must send written notification to the case manager within five working days of the first notification.

(d) Notification requirements. The notification must include:

- (1) the date of service suspension;
- (2) the reason for the suspension;
- (3) the duration of the suspension, if known; and
- (4) an explanation of the provider's attempts to resolve the problem that caused the suspension, including the reason why the problem was not resolved. This subparagraph applies only to circumstances described in subsections (a)(2) and (b) of this section.

(e) Resuming services after a suspension. The provider must resume services after a suspension:

- (1) on the date specified in writing by the case manager;
- (2) upon the individual's return home from an institution listed in subsection (a)(1) of this section; or
- (3) on the date the provider becomes aware of the individual's return home.

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DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND ADJUNCT SUPPORT SERVICES

40 TAC §51.421

The new section is adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§51.421. Requirements for Attendants.

(a) When an individual selects his attendant, the home and community support services agency (HCSSA) provider may hire that attendant if the attendant:

(1) meets minimum qualifications of the HCSSA for the service required as specified in Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(2) is willing to be employed by the HCSSA; and

(3) is determined by the HCSSA RN to be competent to deliver the service according to the IPC.

(b) A provider must not hire or employ an attendant if that attendant is:

(1) the individual's parent, guardian, or managing conservator, if the individual is under age 18; or

(2) the individual's spouse.

(c) A provider who employs an attendant for an individual must:

(1) provide the attendant with individual-specific information and training in the individual's residence on all tasks that the attendant will perform;

(2) deliver the training according to the requirements described in §97.245 of this title (relating to Staffing Policies); and

(3) document:

(A) when the training was conducted; and

(B) the tasks covered in the training.

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DIVISION 4. SERVICE DELIVERY REQUIREMENTS FOR HOST FAMILIES

40 TAC §51.431, §51.433

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DIVISION 5. SERVICE DELIVERY REQUIREMENTS FOR CONSUMER DIRECTED SERVICES

40 TAC §51.441

The new section is adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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DIVISION 6. SERVICE DELIVERY REQUIREMENTS FOR TRANSITION ASSISTANCE SERVICES

40 TAC §51.451

The new section is adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services

Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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DIVISION 7. SERVICE DELIVERY REQUIREMENTS FOR ADAPTIVE AIDS

40 TAC §§51.461, 51.463, 51.465

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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DIVISION 8. SERVICE DELIVERY REQUIREMENTS FOR MINOR HOME MODIFICATIONS

40 TAC §§51.471, 51.473, 51.475, 51.477, 51.479

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§51.501, 51.503, 51.505, 51.507, 51.509, 51.511, 51.513, 51.515

The new sections are adopted under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§51.503. *In-Home Record.*

A respite or adjunct support services provider must maintain an in-home record in the individual's residence that contains:

- (1) service delivery records from the last seven days of service;
- (2) the individual's practitioner's name and telephone number;
- (3) a signed copy of the Client's Rights and Responsibilities form;
- (4) a written evacuation plan;
- (5) emergency contact numbers;

(6) an alternative service delivery plan for provider coverage;

(7) contact numbers for reporting complaints, abuse, or neglect;

(8) practitioner's orders for any skilled care or tasks, medications, or delegated tasks, signed within the preceding 12 months, if applicable; and

(9) if applicable, signed and dated nursing notes that must include the following information:

(A) medication administration or treatment;

(B) nursing interventions completed according to practitioner's orders; and

(C) the nursing assessment completed at the beginning of each shift.

§51.515. *Record Keeping.*

(a) General record-keeping requirements. The provider must maintain records according to:

(1) Chapter 49 of this title (relating to Contracting for Community Care Services);

(2) Chapter 69 of this title (relating to Contract Administration); and

(3) the terms of the contract.

(b) Program-specific records.

(1) The provider must maintain records that demonstrate compliance with the requirements of this chapter.

(2) If a provider delivers services that will be reimbursed by a third-party resource, the provider's records must specify the date and time those services were delivered.

(c) Financial records. The provider must maintain financial records:

(1) to support billing for payment under §51.507 of this chapter (relating to Reimbursement);

(2) to document the receipt of the reimbursement. The documentation must include:

(A) the amount of the reimbursement;

(B) the voucher number;

(C) the warrant number;

(D) the date of receipt; and

(E) any other information necessary to trace deposits of reimbursements and payment made from the reimbursements in the provider's accounting system (if applicable); and

(3) in accordance with generally accepted accounting principles (GAAP) and DADS procedures. A provider's financial records must include the following, as applicable:

(A) deposit slips, bank statements, cancelled checks, and receipts;

(B) purchase orders;

(C) invoices;

(D) journals and ledgers;

(E) payroll and tax records;

- (F) service delivery documentation;
 - (G) Internal Revenue Service and Department of Labor records and other government records and forms;
 - (H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);
 - (I) equipment inventory records;
 - (J) records of the provider's internal accounting procedures;
 - (K) chart of accounts, as defined by GAAP; and
 - (L) records of the provider's company policies.
- (d) Subcontractor records. The provider must maintain invoices, contracts, and service delivery records on all subcontractors. Maintenance of all records to support claims is the responsibility of the provider.

(e) Failure to maintain records. Failure to maintain records as required in this section may result in:

- (1) corrective action plans;
- (2) vendor hold as described in §49.61(b) of this title (relating to Sanctions); or
- (3) other action that DADS deems necessary or appropriate.

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CHAPTER 95. MEDICATION AIDES-- PROGRAM REQUIREMENTS

40 TAC §§95.101, 95.103, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, 95.128

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§95.101, 95.103, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128 in Chapter 95, governing Medication Aides--Program Requirements. The amendments to §95.101 and §95.109 are adopted with changes to the proposed text published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2188). The amendments to §§95.103, 95.107, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128 are adopted without changes to the proposed text.

The amendments are adopted, in part, to implement legislation governing medication aides in facilities that was recommended by the Sunset Advisory Commission and enacted by the 78th Legislature, Regular Session, in Senate Bill (SB) 285. SB 285 made amendments to the Health and Safety Code, Chapter 2, Subchapter N, that are reflected in these rule amendments as follows:

(1) To implement the provisions of Health and Safety Code, §242.610(i)-(l), the amendments add late permit renewal fees in §95.109(c)(1)(C) and §95.115(c)(2)-(5) for a permit holder who applies to renew a permit less than one year after the permit has expired or who wishes to reinstate a permit after working as a medication aide in another state.

(2) Pursuant to Health and Safety Code, §242.6101, the amendment to §95.111 establishes DADS' procedures for notifying an applicant of the results of an examination and allows an applicant who fails an exam to request an analysis of his performance on the exam.

(3) To comply with Health and Safety Code, §242.610, the amendment to §95.115: (A) establishes DADS' procedure for a staggered licensing renewal system and removes references to all permits expiring on December 31 of each year; (B) prohibits a person whose permit has expired from working as a medication aide until the permit has been renewed; (C) allows a permit holder to renew an unexpired permit by paying the renewal fee to DADS before the expiration date; (D) provides a time frame and fee structure for assessing late renewal fees; and (E) changes the permissible time period for permit renewal from up to two years after expiration to no more than one year after expiration.

(4) Pursuant to Health and Safety Code, §242.612(a) and (c), the amendment to §95.123(c) establishes DADS' procedures for revoking, suspending, or refusing to renew a permit for a permit holder who violates Health and Safety Code, Chapter 242, Subchapter N, or the rules governing medication aides, and for placing on probation a person whose permit is suspended.

References to the Texas Department of Human Services were replaced with references to the Department of Aging and Disability Services (DADS), because DADS is the agency that administers the medication aide permit program as a result of the consolidation of health and human services agencies in 2004. References to the Board of Vocational Nurse Examiners were replaced with references to the Board of Nurse Examiners for the State of Texas (BNE) to reflect the merger of the Board of Vocational Nurse Examiners with the BNE effective February 1, 2004. To update and correct statutory citations governing medication aides in facilities, the amendments replace references to Health and Safety Code, Chapter 242, Subchapter F, with references to Health and Safety Code, Chapter 242, Subchapter N.

To reflect current DADS procedures, the amendments revise the due dates for various actions in the permit application and renewal processes in §95.107(d)(5), (d)(6), (e)(6), and (e)(7) and §95.111(a)(9)(B) from "within 45 days" to "by the date given;" revise §95.109(c) and §95.128(n) to require payment of an application fee or a renewal fee by cashier's check or money order; and revise §95.128(n) to delete the procedure for DADS to follow if a personal check is not honored by a financial institution.

DADS received no comments regarding adoption of the amendments.

Minor editorial changes were made to §95.101(b)(12) to properly cite a reference to the Code of Federal Regulations, and to §95.109(c)(1)(D) for consistency within the section.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Health and Safety Code, Chapter 142, Subchapter B, which authorizes DADS to regulate the administration of medication by home and community support services agencies, including the regulation of medication aides who are employed by home and community support services agencies; and Health and Safety Code, Chapter 242, Subchapter N, which authorizes DADS to regulate the administration of medication in nursing and other facilities, including the regulation of medication aides in nursing and other facilities.

§95.101. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents; and

(2) Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency.

(b) Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) BNE--Board of Nurse Examiners for the State of Texas.

(3) DADS--Department of Aging and Disability Services.

(4) Examination--A written competency evaluation for medication aides administered by DADS.

(5) Facility--An institution licensed under the Health and Safety Code, Chapter 242; a state school as defined in the Health and Safety Code, §531.002(17); a correctional institution as established under the jurisdiction of the Texas Department of Criminal Justice; an intermediate care facility for persons with mental retardation operated by a community mental retardation center established under Health and Safety Code, Chapter 534; or an assisted living facility licensed under the Health and Safety Code, Chapter 247.

(6) Licensed nurse--A licensed vocational nurse or a licensed registered nurse.

(7) Licensed vocational nurse--A person licensed by the BNE, or who holds a license from another state recognized by the BNE, to practice vocational nursing in Texas.

(8) Medication aide--A person permitted by DADS to administer medications to facility residents or to persons served by home and community support services agencies.

(9) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(10) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(11) Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(12) Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 Code of Federal Regulations (CFR), §§483.151-483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on DADS' nurse aide registry.

(13) Registered nurse (RN)--A person licensed by the BNE, or who holds a license from another state recognized by the BNE, to practice professional nursing in Texas.

(14) Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(15) Training program--A program approved by DADS to instruct individuals to act as medication aides.

§95.109. Application Procedures.

(a) An applicant under §95.107(a) of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to DADS, no later than 30 days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(b) DADS considers an application under subsection (a) of this section as officially submitted when DADS receives the permit application and examination fee.

(c) Payment of fees must be by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration;

(iii) \$30 for a former permit holder who meets the criteria in §95.115(c)(5) of this title (relating to Permit Renewal); and

(D) permit replacement fee--\$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(d) All applicants must submit the following application materials.

(1) The general statement enrollment form must contain:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in §95.107(b) of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) were met prior to the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature which has been dated and notarized.

(2) A certified copy or a photocopy which has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript or a general equivalency diploma, unless the applicant is applying under §95.107(d) of this title (relating to Training Requirements; Nursing Graduates; Reciprocity).

(e) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the medication aide final exam must be voided.

(f) DADS sends notice of application acceptance or ineligibility, disapproval, or deficiency in accordance with §95.127 of this title (relating to Application Processing).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

CHAPTER 58. OYSTERS AND SHRIMP

Subchapter B. Statewide Shrimp Fishery Proclamation

§58.101. Application.

§58.102. Definitions.

§58.103. Shrimp Management Plan.

§58.104. Penalty and Responsibility for Violation.

§58.130. Shrimp License Buyback Program.

§58.150. Sale, Purchase, and Handling of Shrimp--General Rules.

§58.160. Taking or Attempting To Take Shrimp (Shrimping)--General Rules.

§58.161. Shrimping in Outside Waters.

§58.162. Shrimping in Inside Waters--General Rules.

§58.163. Shrimping in Inside Waters--Commercial Bay Shrimping.

§58.164. Shrimping Inside Waters--Commercial Bait Shrimping.

§58.165. Non-commercial (Recreational) Shrimping.

Subchapter C. Statewide Crab Fishery Proclamation

§58.201. Crab License Management Program.

§58.202. Definitions.

§58.203. Licensing.

§58.204. License Expiration.

§58.205. Display of License.

§58.206. Issuance and Renewal of Commercial Crab Fisherman's License.

§58.207. License Transfer.

§58.208. Limit on Number of Licenses Held; Designated License Holder.

§58.209. License Suspension and Revocation.

§58.210. License Buyback Program.

Subchapter D. Finfish Fishery Proclamation

§58.301. Delegation of Authority.

§58.302. Display of License.

§58.303. License Transfer.

§58.304. License Buyback Program.

This review is pursuant to the Texas Government Code, §2001.039.

The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rules reflect current legal, policy, and procedural considerations. Consideration of publication of amendments or repeals resulting from this rules review is scheduled for the Parks and Wildlife Commission on August 24, 2005.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200502835

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Filed: July 12, 2005



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §33.23(a)

Liquor Permits	
Agent's Permit	<u>\$40.00</u> [\$33.00]
Airline Beverage Permit	<u>\$166.00</u> [\$89.00]
Beverage Cartage Permit	<u>\$77.00</u> [\$43.00]
Bonded Warehouse Permit	<u>\$69.00</u> [\$39.00]
Bonded Warehouse Permit (Dry Area)	<u>\$69.00</u> [\$39.00]
Brewer's Permit	<u>\$294.00</u> [\$153.00]
Brewpub License	<u>\$217.00</u> [\$115.00]
Carrier's Permit	<u>\$128.00</u> [\$69.00]
Caterer's Permit	<u>\$141.00</u> [\$76.00]
Daily Temporary Mixed Beverage Permit (Per Day)	<u>\$205.00</u> [\$108.00]
Daily Temporary Private Club Registration Permit	<u>\$230.00</u> [\$121.00]
Distiller's & Rectifier's Permit	<u>\$179.00</u> [\$95.00]
Food and Beverage Certificate	<u>\$294.00</u> [\$153.00]
Forwarding Center Authority	<u>\$141.00</u> [\$76.00]
Industrial Permit	<u>\$133.00</u> [\$72.00]
Local Cartage Permit	<u>\$103.00</u> [\$56.00]
Local Distributor's Permit	<u>\$230.00</u> [\$121.00]
Local Industrial Alcohol Manufacturer's Permit	<u>\$166.00</u> [\$89.00]
Manufacturer's Agent's Permit	<u>\$40.00</u> [\$33.00]
Market Research Packager's Permit	<u>\$64.00</u> [\$33.00]
Minibar Permit	<u>\$179.00</u> [\$95.00]
Mixed Beverage Permit	<u>\$307.00</u> [\$160.00]
Mixed Beverage Late Hours Permit	<u>\$166.00</u> [\$89.00]
Mixed Beverage Restaurant Permit with Food and Beverage Certificate	<u>\$307.00</u> [\$160.00]
Non Resident Brewer's Permit	<u>\$192.00</u> [\$102.00]
Non Resident Seller's Permit	<u>\$192.00</u> [\$102.00]
Package Store Permit	<u>\$256.00</u> [\$134.00]
Package Store Tasting Permit	<u>\$90.00</u> [\$50.00]
Wine Only Package Store Permit	<u>\$281.00</u> [\$147.00]
Passenger Train Beverage Permit	<u>\$307.00</u> [\$160.00]
Private Carrier's Permit	<u>\$128.00</u> [\$69.00]

Private Club Registration Permit	<u>\$460.00</u> [\$237.00]
Private Club Beer and Wine Permit	<u>\$460.00</u> [\$237.00]
Private Club Late Hours Permit	<u>\$179.00</u> [\$95.00]
Private Storage Permit	<u>\$103.00</u> [\$56.00]
Temporary Charitable Auction Permit	<u>\$205.00</u> [\$108.00]
Public Storage Permit	<u>\$103.00</u> [\$56.00]
Wholesaler's Permit	<u>\$358.00</u> [\$186.00]
General Class B Wholesaler's Permit	<u>\$332.00</u> [\$173.00]
Local Class B Wholesaler's Permit	<u>\$332.00</u> [\$173.00]
Wine and Beer Retailer's Permit Railway Car	<u>\$281.00</u> [\$147.00]
Wine and Beer Retailer's Permit Excursion Boat	<u>\$281.00</u> [\$147.00]
Wine Bottler's Permit	<u>\$307.00</u> [\$160.00]
Winery Permit	<u>\$358.00</u> [\$186.00]
Winery Storage Permit	<u>\$103.00</u> [\$56.00]
Beer Licenses	
Agent's Beer License	<u>\$40.00</u> [\$33.00]
Branch Distributor's License	<u>\$356.00</u> [\$186.00]
General Distributor's License	<u>\$358.00</u> [\$186.00]
Importer's License	<u>\$141.00</u> [\$76.00]
Importer's Carrier's License	<u>\$103.00</u> [\$56.00]
Local Distributor's License	<u>\$358.00</u> [\$186.00]
Manufacturer's License	<u>\$332.00</u> [\$173.00]
Manufacturer's Warehouse License	<u>\$281.00</u> [\$147.00]
Non Resident Manufacturer's License	<u>\$294.00</u> [\$153.00]
Beer Retailer's Off Premise License	<u>\$281.00</u> [\$147.00]
Beer Retailer's On Premise License	<u>\$281.00</u> [\$147.00]
Retail Dealer's On Premise Late Hours License	<u>\$166.00</u> [\$89.00]
Storage License	<u>\$103.00</u> [\$56.00]
Temporary License	<u>\$205.00</u> [\$108.00]
Temporary License Special 3 Day Wine and Beer	<u>\$205.00</u> [\$108.00]
Temporary License Special 4 Day Wine and Beer	<u>\$205.00</u> [\$108.00]
Wine and Beer Retailer's Permit	<u>\$281.00</u> [\$147.00]
Wine and Beer Retailer's Off Premise Permit	<u>\$281.00</u> [\$147.00]

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	\$100	\$100	\$100
Examination	1071	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*320	*320	*320
Active Renewal - Nonresident	*420	*420	*420
Active Renewal 1-90 days late - Resident	*480	*480	*480
Active Renewal 91-365 days late - Resident	*640	*640	*640
Active Renewal 1-90 days late - Nonresident	*630	*630	*630
Active Renewal 91-365 days late - Nonresident	*840	*840	*840
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	75	75	75
Inactive Renewal - Nonresident	150	150	150
Inactive Renewal 1-90 days late - Resident	112.50	112.50	112.50
Inactive Renewal 91-365 days late - Resident	150	150	150
Inactive Renewal 1-90 days late - Nonresident	225	225	225
Inactive Renewal 91-365 days late - Nonresident	300	300	300
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95

Reinstatement - Resident	695	695	695
Reinstatement - Nonresident	785	785	785
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a \$200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the \$200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

**NCIDQ fee: 2005--\$695; 2006--\$710; 2007--\$720. Specified amounts are maximum estimates made by NCIDQ, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

***LARE fee: Fiscal year 2006--\$860; Fiscal year 2007--\$885. Specified amounts are estimates made by CLARB, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on July 29, 2005 at 6:00 p.m., in the cafeteria at the Oveal Williams Senior Center, 1414 Martin Luther King Drive, Corpus Christi, Texas 78401, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed \$15,000,000, the proceeds of which will be loaned to Housing and Community Services Inc., a non-profit housing corporation, to finance the rehabilitation and renovation of an existing 120-unit multifamily housing property (the "Property") located in the city of Corpus Christi, Texas. The public hearing, which is the subject of this notice, will concern the North Side Manor Apartments with 100 units located at 1401 North Alameda, Corpus Christi, Texas 78401 and 20 units located at 1735 Lake Street, Corpus Christi, Texas 78401. The Property will be owned by HCS 311, LLC, a subsidiary of Housing and Community Services, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Katherine Closmann at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 424.

Persons who intend to appear at the hearing and express their views are invited to contact Katherine Closmann in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Katherine Closmann prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext.400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Laura Smith at 1-888-638-3555, ext. 400, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Katherine Closmann at kclosmann@tsahc.org.

TRD-200502824

David Long

President

Texas State Affordable Housing Corporation

Filed: July 11, 2005

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act and Rules and Regulations of the Texas Commission on Environmental Quality

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and Rules and Regulations of the Texas Commission on Environmental Quality. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: ***Harris County, Texas, and the State of Texas, by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. David Duarte, Individually and d/b/a Eagle Prentiss & Hilaria Duarte, Individually and d/b/a Eagle Prentiss; No. 2004-54495; in the 133rd Judicial District, Harris County, Texas.***

Nature of Suit: This suit concerns a municipal solid waste disposal enterprise on Derrington Street near Windfern and the Sam Houston Parkway in Houston, Texas. The site at all relevant times has been owned and/or operated by Defendants David and Hilaria Duarte as an unpermitted municipal solid waste disposal site.

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the claims in the suit. The Agreed Final Judgment requires Defendants to pay \$16,200.00 in civil penalties, \$2,000 in deferred payments if further violations occur, and \$1,500.00 in attorney's fees. The proposed Agreed Final Judgment further permanently enjoins the Defendants from further outdoor burning of municipal solid waste, or causing, suffering, allowing, or permitting the storage, processing, removal, or disposal of municipal solid waste at the site without a permit or other authorization as required by law.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Susan K. Armstrong, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502862

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: July 13, 2005

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of a **Request for Proposals (RFP) #303-5-11288**. TBPC seeks a five (5) or ten (10) year lease of approximately 5,823 sq. ft. of office space in the City of Houston, Harris County, Texas.

The deadline for questions is August 11, 2005 and the deadline for proposals is August 15, 2005 at 3:00 P.M. The award date is September 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=59985.

TRD-200502866

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: July 13, 2005

◆ ◆ ◆ Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 1, 2005, through July 7, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 13, 2005. The public comment period for these projects will close at 5:00 p.m. on August 12, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Industrial Real Estate Holdings LP; Location: The project is located along the Houston Ship Channel, at 14035 Industrial Road, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289900; Northing: 2392600. Project Description: The applicant proposes to amend Permit No. 23656(01) to add a 600-foot dock along an existing bulkhead. The applicant also proposes to dredge the area to -40 feet. The dredge material will be placed in the previously authorized dredge material placement areas. The applicant also requests authorization to maintenance dredge for 10 years. CCC Project No.: 05-0350-F1; Type of Application: U.S.A.C.E. permit application #23656(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Industrial Real Estate Holdings LP; Location: The project is located along the Houston Ship Channel, at 14035 Industrial

Road, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 290069; Northing: 3292573. Project Description: The applicant proposes to amend Permit No. 09776(08) to add 310 feet of bulkhead. The applicant also requests to remove an existing concrete deck and sheet piling. After the construction of the proposed bulkhead and the removal of the deck and sheet piling, the applicant proposes to dredge the area to -40 feet. The 37,389 cubic yards of dredge material will be placed in the previously authorized dredge material placement areas. The dredged area will be added to the existing permit for future maintenance dredging. CCC Project No.: 05-0348-F1; Type of Application: U.S.A.C.E. permit application #09776(09) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Transtexas Gas Corporation; Location: The project is located approximately 0.6 miles northeast of Eagle Point in San Leon, in the Galveston Bay State Tract (ST) 308, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15:

Proposed ST 308 Well #1/start of pipeline Easting: 315,168.55; Northing: 3,265,189.24.

1st pivot point of pipeline (20+61) Easting: 315,781.34; Northing: 3,265,049.96.

2nd pivot point of pipeline (33+22) Easting: 316,138.46; Northing: 3,265,191.85.

3rd pivot point of pipeline (38+54) Easting: 316,190.62; Northing: 3,265,345.45.

End point of pipeline (41+06) Easting: 316,159.74; Northing: 3,265,415.72.

Project Description: The applicant proposes to drill ST 308 Well #1 and construct a well platform, production platform and flowlines. The applicant also proposes to construct and maintain a 4,106-foot pipeline measuring up to 12 inches in diameter from the aforementioned proposed well (ST 308 Well #1) to an existing well located in ST 287 (authorized under Department of the Army Permit 23606). The pipeline, which would be installed by trenching, would be situated 500 feet or greater away from any oyster lease or reef. Approximately 2,667 cubic yards of shell, gravel or crushed rock would be discharged to construct a shell pad. The shell pad would remain in place upon completion to provide hard substrate for habitat use. CCC Project No.: 05-0355-F1; Type of Application: U.S.A.C.E. permit application #23827 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Transtexas Gas Corporation; Location: The project is located near Eagle Point in State Tracts (ST's) 287, 308, 309, 330, and 331 in Galveston Bay, Chambers and Galveston Counties, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Bacliff and Texas City, Texas. Approximate UTM Coordinates of the three project components in NAD 27 (meters): Zone 15 are: Proposed ST 308 Well #1 Easting: 316139; Northing: 3265192 (Bacliff Quad); Proposed pipeline starting at the proposed ST 308 Well #1 and running approximately south for 14,285 feet to an existing Transtexas Gas Corp platform in ST 331 at coordinates 314890E; 3261953N (Texas City Quad); Proposed 740-foot-long pipeline between proposed ST 308 Well #1 running north to an existing Davis platform in ST 287 at

Easting: 316160; Northing: 3265416 (Bacliff Quad). Project Description: The applicant proposes to drill a well in search for oil and gas in ST 308 and construct well platforms, a production platform and flow-lines. The applicant also proposes to lay and maintain 2 pipelines. The first pipeline, proposed to be approximately 14,285 feet long would run from the aforementioned proposed well to an existing Transtexas Gas Corporation production platform located in ST 311. Of the total 14,285 feet, approximately 1,750 feet of pipeline would be bored under an existing oyster reef. A second proposed pipeline would measure approximately 740 feet long and would run from the proposed ST 308 well to an existing Davis Petroleum Corporation and Transtexas Gas Corporation platform in ST 287. CCC Project No.: 05-0357-F1; Type of Application: U.S.A.C.E. permit application #23840 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Village of Surfside Beach; Location: The project is located along the Gulf of Mexico shoreline north and east of the Freeport Entrance Jetties from Jetty Park to Whelk Street in the Village of Surfside, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Start of project: Zone 15; Easting: 276462; Northing: 3202968; End of project: Zone 15; Easting: 277217; Northing: 3204173. Project Description: The applicant proposes to revise Department of the Army (DA) Permit 21345 and its amendments for the Surfside Beach Nourishment and Dune Construction Project. The proposed Amendment (04), if authorized, would supercede all previous authorizations. The proposed project would be constructed to maintain the following design criteria: 1) the beach design would have a survival life of approximately 5 years; 2) a dune, measuring 4,800 feet in length, would be constructed; 3) and a beach fill measuring 200 feet in width and 4,800 feet in length would be constructed seaward of the dune. A total of 979,000 cubic yards of beach quality sand would be placed along the Surfside Beach, with approximately 117,000 cubic yards of that material used for dune fill and 857,000 cubic yards used for beach fill. Of the 979,000 cubic yards of sand, half of that material (approximately 487,000 cubic yards) would be immediately placed for the initial beach nourishment and the remaining half would be placed 5 years later for beach renourishment. The proposed dune would be constructed adjacent to the existing revetment at Jetty Park and would run parallel to the shore and seaward of existing homes. All existing riprap and rubble within the footprint of the dune fill would be relocated to an upland site. Any rubble/riprap outside the footprint that is deemed a hazard to public safety would also be removed. Planting and installation of sand fences would be used as needed to establish dune grass. No work would occur during the March 15 to September 30 timeframe designating the turtle nesting period. CCC Project No.: 05-0362-F1; Type of Application: U.S.A.C.E. permit application #21345(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200502859

Trace Finley

Policy Director, General Land Office

Coastal Coordination Council

Filed: July 13, 2005

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/18/05 - 07/24/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/18/05 - 07/24/05 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200502826

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 11, 2005

Texas Commission on Environmental Quality

Notice of Final Deletion of the McNabb Flying Service Proposed State Superfund Site from the State Superfund Registry

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of final deletion of the McNabb Flying Services (the site) from its proposed-for-listing status on the state registry for state Superfund sites. The state registry lists contaminated sites that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state registry in the November 12, 1999, issue of the *Texas Register* (24 TexReg 10233). The site, including all land, structures, appurtenances, and other improvements, is approximately 70 acres located at the southeast corner of County Road 146 and County Road 539, Alvin, Brazoria County, Texas. The approximate geographic coordinates of the site are Latitude 29 degrees 27 minutes 8 seconds North and Longitude 95 degrees 17 minutes 30 seconds West. In addition, the site included any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The Texas Natural Resource Conservation Commission (TNRCC), predecessor agency of the TCEQ, inspected the site and noted numerous

drums and other containers of various sizes containing pesticides, solvents, paint, and other unknown materials. In addition to the drums and containers, the soil appeared to be impacted. The TNRCC collected several soil and groundwater samples. The results of the soil samples indicated that the site was impacted by various pesticides. These substances, in the amounts detected at the site, were determined to pose a risk for imminent and substantial endangerment to public health and safety or the environment.

Because the site was accepted into the TCEQ Voluntary Cleanup Program, it may now be deleted from the state registry as provided by Texas Health and Safety Code, §361.189(a) and §335.344(c).

In accordance with §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the site on May 26, 2005, at the TCEQ, 12100 Park 35 Circle, Austin, Texas. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Brazoria County, Texas stating that the site has been deleted from the state registry.

All inquiries regarding the deletion of the site should be directed to John Flores, (800) 633-9363.

TRD-200502833

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2005



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should

be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Alkusari Texas Limestone Corporation; DOCKET NUMBER: 2004-0719-WQ-E; TCEQ ID NUMBER: RN103777272; LOCATION: 4121 East State Highway 29, Bertram, Burnet County, Texas; TYPE OF FACILITY: cut stone and stone products facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and TWC, §26.121(a), by failing to obtain coverage under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit for storm water; PENALTY: \$4,750; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Frankie Mae Hamilton; DOCKET NUMBER: 2004-0622-MSW-E; TCEQ ID NUMBER: RN103944872; LOCATION: 3442 County Road 354, Palestine, Anderson County, Texas; TYPE OF FACILITY: scrap tire disposal; RULES VIOLATED: 30 TAC §330.5(c) and §328.60(a), and Texas Health and Safety Code (THSC), §361.112(a), by failing to dispose of solid waste at an approved facility and caused, suffered, allowed, or permitted wastes to be stored, processed, or disposed of at an unauthorized facility; PENALTY: \$7,875; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Gabriel Vigil dba Mr Press; DOCKET NUMBER: 2004-0906-IHW-E; TCEQ ID NUMBERS: 86173, TXR000032656, and RN100564202; LOCATION: 224 East Cano Street, Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: dry cleaning and laundry facility; RULES VIOLATED: 30 TAC §335.9(a)(1), by failing to maintain and make easily retrievable and easy to copy, records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; 30 TAC §335.6(c), by failing to provide notice to the executive director in writing or using electronic notification software of any changes or additional information to that reported previously within 90 days of the occurrence of such change or of becoming aware of such additional information; 30 TAC §335.69(f)(4) and 40 Code of Federal Regulations (CFR) §262.34(d)(4), by failing to make the required arrangements with local authorities as required by the preparedness and prevention regulations for owners and operators of all hazardous waste facilities; 30 TAC §335.69(f)(5)(C) and 40 CFR §262.34(d)(5)(iii), by failing to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies; 30 TAC §335.69(f)(2) and 40 CFR §265.174, by failing to inspect hazardous waste containers, consisting of perchloroethylene, on a weekly basis for leakage deterioration; PENALTY: \$4,000; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Norma Garza and Julian Hinojosa dba Garza Trucking; DOCKET NUMBER: 2004-0678-MSW-E; TCEQ ID NUMBER: RN104098165; LOCATION: P.O. Box 116, La Blanca, Hidalgo County, Texas; TYPE OF FACILITY: dump trucking business; RULES VIOLATED: 30 TAC §330.32(b), by failing to ensure

that the waste collected was unloaded only at facilities authorized to accept the type of waste being transported; PENALTY: \$2,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Rodney Fincher; DOCKET NUMBER: 2004-1633-MSW-E; TCEQ ID NUMBER: RN104322318; LOCATION: Willis Point, Van Zandt County, Texas; TYPE OF FACILITY: scrap tire transporter operation; RULES VIOLATED: THSC, §361.112(c), by failing to transport used or scrap tires to an authorized facility; 30 TAC §328.55 and §328.57(c)(1), by failing to obtain a registration from the TCEQ before collecting and transporting scrap tires; PENALTY: \$2,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Viking Industries, Inc.; DOCKET NUMBER: 2004-1543-MSW-E; TCEQ ID NUMBER: RN104247572; LOCATION: 1840 Upper Denton Road, Weatherford, Parker County, Texas; TYPE OF FACILITY: recycling center; RULES VIOLATED: 30 TAC §328.5(e), by failing to have a fire prevention and suppression plan as required when managing combustible materials; 30 TAC §328.5(c)(2)(B), by failing to maintain records necessary to document staff training in the inspection of incoming loads to ensure that the loads contain no more than 10% incidental non-recyclable waste; 30 TAC §332.8(b)(2), by failing to treat all permanent in-plant roads for maximum control of dust emissions and post ten miles per hour or below speed limit signs; 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.5, by failing to obtain authorization for the collection, storage, processing, or disposal of municipal solid waste; PENALTY: \$7,130; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200502843

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2005



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Burnet County; DOCKET NUMBER: 2003-1190-PST-E; TCEQ ID NUMBERS: 11912 and RN101488815; LOCATION: 3063 Highway 281 South, Marble Falls, Burnet County, Texas; TYPE OF FACILITY: county fleet maintenance; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tanks at the facility; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the underground storage tank registration and self-certification form was fully and accurately completed and submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(iii) and TWC, §26.3467(a), by failing to ensure that a valid TCEQ delivery certificate was posted at the facility; PENALTY: \$4,050; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200502842

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2005



Notice of Water Quality Applications

The following notices were issued during the period of June 28, 2005 through July 8, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE**.

CITY OF BLOOMBURG has applied for a renewal of TPDES Permit No. WQ0013930001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 200 feet south of the intersection of Anthony and Louisiana Streets in Cass County, Texas.

BROOKELAND FRESH WATER SUPPLY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0010998001 to authorize an increase in the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day and to authorize modifications to the facility. The facility is located approximately 400 feet south of Recreational Road 255 and approximately 5 miles west of the intersection of Recreation Road 255 and U.S. Highway 96 in Jasper County, Texas.

CANUTILLO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 11561-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located on the east side

of Bosque Road, approximately 4,100 feet north of the intersection of Farm-to-Market Road 259 and Bosque Road and approximately 2 miles northwest of the intersection of State Highway Spur Road 375 and Interstate Highway 10 in El Paso County, Texas.

CEMEX CEMENT OF TEXAS, L.P. which operates the Balcones Cement Plant, which manufactures Portland and masonry cement, has applied for a renewal of TPDES Permit No. WQ0002179000, which authorizes the discharge of wash water from the plant process and truck wash areas and storm water from plant and material/product storage areas on an intermittent and flow variable basis via Outfall 001; and treated domestic wastewater on a flow variable basis via Internal Outfall 101. The facility is located at 2580 Wald Road, at the intersection of Wald Road and Solms Road, approximately 0.75 mile north of Interstate Highway 35, and approximately 1.8 miles southwest of the City of New Braunfels, Comal County, Texas.

CHAPEL HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11857-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 18 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the north side of State Highway 64, approximately 1/2 mile north of the school campus and approximately 4.8 miles east of the intersection of Highway 64 and Loop 323 in Smith County, Texas.

CITY OF ECTOR has applied for a renewal of TPDES Permit No. 10552-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located approximately 4,700 feet north of U. S. Highway 82 and 800 feet west of Farm-to-Market Road 898 in Fannin County, Texas.

FORMOSA UTILITY VENTURE, LTD. AND FORMOSA PLASTICS CORPORATION, TEXAS which operates a plastics and organic and inorganic chemicals manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002436000, which authorizes the discharge of remediated groundwater and combined internal wastewater streams (previously monitored effluents consisting of treated process wastewater, utility wastewater, Ion Exchange Membrane wastewater, and storm water via internal Outfalls 101 and 201) at a daily average flow not to exceed 9,700,000 gallons per day via Outfall 001; non-process area storm water, hydrostatic test water, fire water, non-contact steam condensate, and non-contact wash water on an intermittent and flow variable basis via Outfalls 002 through 012. The applicant has also requested a minor amendment to correct the typographical error requiring the fecal coliform effluent limitation reported as a daily maximum to be reported as a daily average using a 30-day geometric mean at Outfall 001; clarify the historic discharge of equipment/facility washdown via internal Outfall 101; increase the discharge from a daily average flow not to exceed 4,000,000 gallons per day to a daily average flow not to exceed 4,400,000 gallons per day via internal Outfall 101, due to heavier than normal rain fall events resulting in higher volumes of storm water routed to treatment; clarify the historic discharge of equipment/facility washdown, storm water, and water treatment wastewaters via internal Outfall 201; and allow the reuse of Olefins-I and Olefins-II process area storm water, as cooling tower makeup water. The facility is located at 201 Formosa Drive, one-mile north of the intersection of State Highway 35 and Farm-to-Market Road 1593, northeast of the City of Point Comfort, Calhoun County, Texas.

GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TCEQ Permit No. 11477-001 to authorize the discharge of treated domestic wastewater to a receiving

body of water and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 624,000 gallons per day. The facility is located approximately 0.5 mile north of Stewart Road and 0.25 mile east of 12-Mile Road on Galveston Island in Galveston County, Texas.

CITY OF GRUVER has applied for a renewal of TPDES Permit No. 10751-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.6 mile west of State Highway 15 and approximately 0.8 mile east of State Highway 136, southeast of the City of Gruver in Hansford County, Texas.

GULF COAST WASTE DISPOSAL AUTHORITY which operates the Washburn Tunnel Facility, which is a publicly owned treatment works that accepts and treats piped wastewater from industrial and domestic facilities, and from additional sources delivered by rail, barge, and over-the-road vehicles, has applied for a major amendment to TCEQ Permit No. WQ0001740000 to incorporate operational changes such as the addition of a centralized waste treatment waste stream, removal of a bleached pulp mill waste stream, and adjustment of permitted waste stream volumes to current and proposed levels: additionally, the applicant requested authorization to remove dioxin testing and fish tissue dioxin testing as the sources of dioxin have been removed from the waste streams; decrease the monitoring frequencies for various parameters at Outfall 001; remove the total manganese effluent limitations at Outfall 001, based on good compliance history; add a multi-port high rate diffuser and revise effluent dilutions at Outfall 001; incorporate a 3-tiered permit to authorize the discharge of treated industrial and domestic wastewaters at a daily average flow not to exceed 30,000,000 gallons per day (Interim/Tier I), 36,000,000 gallons per day (Tier II), and 42,000,000 gallons per day (Tier III) via Outfall 001; and add an intermittent storm water driven overflow Outfall 002. The current permit authorizes the discharge of treated industrial and municipal wastewaters at a daily average flow not to exceed 54,700,000 gallons per day via Outfall 001. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001740000 will replace the existing NPDES Permit No. TX0052591 issued on October 20, 2000 and TCEQ permit No. 01740 issued on August 1, 2000. The facility is located on the south bank of the Houston Ship Channel, approximately one-half mile west and upstream of the Washburn Tunnel, Harris County, Texas.

HANSON AGGREGATES, INC. which operates a limestone quarrying, crushing, and washing operation, has applied for a renewal of TPDES Permit No. WQ0000679000, which authorizes the discharge of treated process wastewater and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located at 6097 Farm-to-Market Road 1810, approximately one-mile east of the intersection of State Highway 101 and Farm-to-Market Road 1810 in the City of Chico, Wise County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 6 has applied for a renewal of TPDES Permit No. 11884-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 475,000 gallons per day. The facility is located approximately 1,000 feet north of Greens Bayou and approximately one mile west of Bammel North Houston Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014583001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility will be located 9,000

feet north/northwest of the Farm-to-Market Road 529 crossing of Langham Creek in Harris County, Texas.

THE CITY OF HENRIETTA has applied for a renewal of TPDES Permit No. 10454-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 245,000 gallons per day. The facility is located approximately 1,800 feet west of Farm-to-Market Road 1197, approximately 4,700 feet northwest of U.S. Highway 82 and Farm-to-Market Road 1197 intersection at Bridge and Omega Streets, northwest of the City of Henrietta in Clay County, Texas.

HUDSON HARBOR, LTD. has applied for a renewal of Permit No. 14227-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via subsurface drip irrigation of 3.2 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on Hudson Shore of Lake Travis, approximately 5.0 miles northwest of the intersection of Ranch-to-Market Road 620 and Ranch-to-Market Road 2222 in Travis County, Texas.

HUDSPETH COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 13858-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located north of and adjacent to the Union Pacific Right-of-Way, approximately 2.1 miles from its intersection with Ranch Road 1111 in Hudspeth County, Texas.

CITY OF JARELL has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014594001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located south of Farm-to-Market Road 487, approximately 1,900 feet east of the intersection of Farm-to-Market Road 487 and County Road 304, Williamson County, Texas.

KOHLER CO. which operates the Kohler Brownwood Vitreous Plant, a ceramic ware (bathroom fixtures) and fiberglass tub manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002995000, which authorizes the discharge of washdown waters, hydraulic test water, process wastewater, storm water, and Cull Dump Area seepage at a daily maximum flow not to exceed 432,000 gallons per day via Outfall 001; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 4601 U.S. Highway 377 South, on the northeast corner of the intersection of U.S. Highway 377 and Farm-to-Market Road 45, in the southwest corner of the City of Brownwood, Brown County, Texas.

CITY OF LAGO VISTA has applied for a major amendment to Permit No. 11752-001, to authorize a change in the manner of effluent disposal from discharge to land application of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 90 acres of golf course and 67 acres of non-public access land planted in cedar trees. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day at Outfall 001. The current permit also authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 205 acres of golf course at Outfall 002. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located west of Country Club Drive and the Lago Vista Golf Course in the east shore of Lake Travis in Lago Vista, approximately five miles west of Jonestown in Travis County. The Lago Vista Golf Course disposal site is located approximately 200 feet northwest of the intersection of Outpost Trace and Rimrock Drive. The Cedar Breaks cedar tree disposal site is located approximately 5,300 feet northwest of

Bar-K Ranch Road and Farm-to-Market Road 1431 in Travis County, Texas.

CITY OF MARBLE FALLS has applied for a major amendment to Permit No. 10654-003, to authorize an increase in the daily average flow from 980,000 gallons per day to an annual average flow of 1,500,000 gallons per day and to increase the acreage irrigated from 234 acres to 360 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day via surface irrigation of 234 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located on the southwest corner of Yett Street and Avenue L in the City of Marble Falls in Burnet County, Texas. The effluent disposal site is located north of the City of Marble Falls approximately 1 mile northwest of the intersection of U.S. Highway 281 and Farm-to-Market Road 1431 in Burnet County, Texas.

MARTIN OPERATING PARTNERSHIP L.P. has applied for a renewal of TPDES Permit No. WQ0012731001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,800 gallons per day. The facility is located approximately 1.25 miles north-northeast of the intersection of State Highway 361 and State Highway Park Road 53 (Mustang Island Road), on the eastern tip of Harbor Island adjacent to Aransas Pass Channel in Nueces County, Texas.

MAYDE CREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11969-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately one mile south of Clay Road and 0.5 mile east of Fry Road in Harris County, Texas.

MUMTAZ BUILDERS LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014557001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located approximately 2.5 miles east of U.S. Highway 59 on East Mount Houston Road in Harris County, Texas.

O&D USA LLC which operates the Green Lake Complex, an organic chemical plant which manufactures acrylonitrile, acetone cyanohydrin, acetonitrile, and catalyst, has applied for a renewal of TPDES Permit No. WQ0002181000, which authorizes the discharge of demineralizer regenerant, boiler blowdown, cooling tower blowdown, nonhazardous landfill storm water leachate, reverse osmosis reject water, treated domestic wastewater, supernatant from the lime sludge pits, and previously monitored effluents (process area storm water) at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001; previously monitored effluents (hydrotest water, compressor condensate, and storm water) and industrial activity area storm water on an intermittent and flow variable basis via Outfall 004; and storm water from the rail marshaling yard and closed landfill on an intermittent and flow variable basis via Outfall 005. The facility is located on State Highway 185 approximately five miles north of the intersection of State Highways 35 and 185 and approximately six and one-half miles south of the City of Bloomington, Calhoun County, Texas.

SOUTHWESTERN PUBLIC SERVICE COMPANY which operates a natural gas-fueled steam electric power plant, has applied for a renewal of TCEQ Permit No. WQ0001842000, which authorizes the disposal of cooling tower blowdown, low volume waste sources, metal cleaning wastes and storm water at a daily average flow not to exceed 4,180,000 gallons per day via irrigation of 746 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on the east side of Farm-to-Market Road 1055, approximately four miles south of the City of Earth,

Lamb County, Texas. The facility and land application site are located in the drainage area of Blackwater Draw which is a tributary of the North Fork of the Double Mountain Fork Brazos River in Segment No. 1241 of the Brazos River Basin.

CITY OF SPEARMAN has applied for a renewal of TPDES Permit No. 10977-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 1 mile northwest of the intersection of State Highway 15 and Farm-to-Market Road 760 and 1.6 miles northeast of the intersection of State Highway 15 and Farm-to-Market Road 2387 in Hansford County, Texas.

TEXAS GENCO II, LP which operates the W.A. Parish Steam Electric Generating Station, has applied for a renewal of TPDES Permit No. WQ0001038000, which authorizes the discharge of blowdown and overflow from the cooling pond (Smithers Lake) at a daily average flow not to exceed 37,000,000 gallons per day via Outfall 001; storm water from coal storage areas (Units 5, 6, 7 and 8) and coal conveyor wash-down commingled with metal cleaning wastes on an intermittent and flow variable basis via Outfall 002; condenser cooling water and previously monitored effluents (metal cleaning wastes, boiler blowdown, ash transport water, low volume waste sources, cooling tower blowdown, and treated sanitary wastewater) at a daily average flow not to exceed 2,121,000,000 gallons per day via Outfall 003; storm water runoff from Units 5-8 and ash storage area (coal pile runoff) at a daily average flow not to exceed 1,296,000 gallons per day via Outfall 004; storm water runoff from Units 1-4 and low volume waste sources on an intermittent and flow variable basis via Outfall 005; and low volume waste sources (Units 1-4 auxiliary cooling tower blowdown) on an intermittent and flow variable basis via Outfall 006. The facility is located at 2500 Y.U. Jones Road, south of and adjacent to Smithers Lake and Dry Creek, southwest of the Town of Thompson, Fort Bend County, Texas.

TYNAN WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14123-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 250 feet southeast of State Highway 359 and approximately 500 feet northeast of the intersection of State Highway 359 and Farm-to-Market Road 796 in Bee County, Texas.

U. S. DEPARTMENT OF JUSTICE - LA TUNA FEDERAL CORRECTIONAL INSTITUTION has applied for a renewal of Permit No. 13341-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 615,000 gallons per day via surface irrigation of 123 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately one mile south of the Town of Anthony and 1,500 feet east of U. S. Highway 80 in El Paso County, Texas.

CITY OF WESTON has applied for a new permit, Proposed Permit No. WQ0014602001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 118 acres of municipal park and golf course. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day via surface irrigation of 118 acres of municipal park and golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately 1.6 miles east of the intersection of Farm-to-Market Road 2478 and Farm-to-Market Road 170, at the intersection of Farm-to-Market Road 170 and Honey Creek in Collin County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information

section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 61, has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize a change in disinfection method from chlorination to ultraviolet (UV) light disinfection. The facility is located approximately 3,500 feet south of Cypress-North Houston Road and 3,000 feet east of Huffmeister Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 202 has applied for a minor amendment to the TPDES permit no. 12631-001 to authorize an additional interim phase at a daily average flow not to exceed 725,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 1300 feet west of Bammel-North Houston, between Bourgeois Road and Harris County Flood Control District ditch in Harris County, Texas.

TRD-200502861

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 13, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 17, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Western Oil Tools, Inc.; SOAH Docket No. 582-05-2071; TCEQ Docket No. 2003-0342-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Western Oil Tools, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502746

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 6, 2005



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 22, 2005**. Section 7.075 also requires that the commission promptly consider any

written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 22, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Abbasi Holdings, Inc. dba Friend Food Mart; DOCKET NUMBER: 2005-0661-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 10990, Regulated Entity Number (RN) 101664514; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,520; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Angleton; DOCKET NUMBER: 2005-0592-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10548-002, RN101607166; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10548-002, and the Code, §26.121(a), by failing to comply with the permit effluent limit for total suspended solids (TSS), by failing to submit the annual sludge report, and by failing to report the monitoring results for the month's minimum and maximum total chlorine residual; PENALTY: \$3,968; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: BP Amoco Polymers, Inc.; DOCKET NUMBER: 2005-0645-AIR-E; IDENTIFIER: Air Account Number HX2897U, RN102537289; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain regulatory authority or meet the demonstration requirements of 30 TAC §101.222 for emissions; PENALTY: \$2,020; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2005-0706-AIR-E; IDENTIFIER: Air Account Number GB0004L, RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by allowing unauthorized emissions; PENALTY: \$12,320; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2005-0224-AIR-E; IDENTIFIER: Air Account Number GB0004L, RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: industrial organic chemicals refining operation; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b) and (c), Permit Numbers 2609, 2610, 2612, 18707, 20982, and 8810/PSD-TX-402M2, and THSC, §382.085(b), by failing to maintain an emission below the allowable emission limits; 30 TAC §101.211(c) and THSC, §382.085(b), by failing to submit the final notification for shutdown; and 30 TAC §101.201(a)(1)(B) and (2)(G) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours of an emissions event; PENALTY: \$144,843; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: CRC-Evans Pipeline International, Inc.; DOCKET NUMBER: 2005-0413-WQ-E; IDENTIFIER: RN100908706; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: welding research; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain a TPDES multi-sector general storm water permit; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Davidson Oil Company dba Flying Star Transport LLC; DOCKET NUMBER: 2005-0761-PST-E; IDENTIFIER: RN104517180; LOCATION: O'Donnell, Lynn County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$400; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(8) COMPANY: Dupre' Transport, Inc.; DOCKET NUMBER: 2005-0565-PST-E; IDENTIFIER: RN104420419; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Eldorado; DOCKET NUMBER: 2005-0229-MWD-E; IDENTIFIER: TPDES Permit Number 10165-001, RN102671690; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10165-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, five-day biochemical oxygen demand (BOD5), pH, and dissolved oxygen (DO); PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(10) COMPANY: Enbridge Pipelines (NE Texas) L.P.; DOCKET NUMBER: 2005-0438-AIR-E; IDENTIFIER: RN102166964; LOCATION: near Tyler, Cass County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 582, and THSC, §382.085(b), by failing to maintain a sulfur recovery efficiency of no less than 94% and by failing to meet the emission rates of 730 pounds per hour (lbs/hr) for sulfur dioxide and 0.4 lbs/hr for hydrogen sulfide; and 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$68,158; ENFORCEMENT COORDINATOR: Carolyn

Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: City of Galveston; DOCKET NUMBER: 2003-0384-MWD-E; IDENTIFIER: RN101607091; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10688-001, and the Code, §26.121(a), by exceeding the permit limits for DO, TSS, and total copper and by failing to ensure at all times that the facility and all its systems of collection, treatment, disposal, and the circular chart records are properly operated; and 30 TAC §30.350(1) and TPDES Permit Number 10688-001, by failing to employ wastewater operators with the required level of certification; PENALTY: \$52,580; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Halbert L P G, Inc.; DOCKET NUMBER: 2005-0690-PST-E; IDENTIFIER: PST Facility Identification Number 25180, RN101842169; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay underground storage tank (UST) fees; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(13) COMPANY: Harris County Municipal Utility District Number 344; DOCKET NUMBER: 2005-0552-MWD-E; IDENTIFIER: TPDES Permit Number 0013483001, RN103017224; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0013483001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen, carbonaceous biochemical oxygen demand, and TSS; PENALTY: \$4,704; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: City of Hearne; DOCKET NUMBER: 2004-1579-MWD-E; IDENTIFIER: TPDES Permit Number 0010046002, RN102835162; LOCATION: Hearne, Robertson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010046002, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS, ammonia nitrogen, and BOD5; PENALTY: \$11,040; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Hill-Lake Gas Storage, L.P.; DOCKET NUMBER: 2005-0187-AIR-E; IDENTIFIER: Air Account Number EA0014H, RN100543024; LOCATION: near Moran, Eastland County, Texas; TYPE OF FACILITY: natural gas reservoir storage; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to certify compliance with Title V Operating Permit Number O-02544; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: KM Aviation, Inc.; DOCKET NUMBER: 2005-0542-AIR-E; IDENTIFIER: RN104372990; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: aerospace surface coating; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization for

the aircraft spray painting booth; PENALTY: \$840; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: City of Luling; DOCKET NUMBER: 2005-0550-MWD-E; IDENTIFIER: TPDES Permit Number 10582002, RN101610798; LOCATION: Luling, Caldwell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10582002, and the Code, §26.121(a), by failing to comply with the permit effluent limits for BOD5, TSS, and ammonia nitrogen; PENALTY: \$1,320; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: McDonald's Corporation; DOCKET NUMBER: 2005-0427-MWD-E; IDENTIFIER: TPDES Permit Number 13807-001, RN102186806; LOCATION: Jersey Village, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13807-001, and the Code, §26.121(a), by failing to comply with the permit effluent limits for TSS, ammonia nitrogen, and flow; PENALTY: \$2,016; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Metton America, Inc.; DOCKET NUMBER: 2005-0448-MWD-E; IDENTIFIER: TPDES Permit Number 0002406000, RN100667633; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (9), TPDES Permit Number 0002406000, and the Code, §26.121(a), by failing to prevent unauthorized discharges and by failing to notify the TCEQ orally within 24 hours, and in writing within five days of becoming aware of noncompliances; PENALTY: \$15,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Odessa-Ector Power Partners, L.P.; DOCKET NUMBER: 2005-0446-AIR-E; IDENTIFIER: RN100223882; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: electricity generating station; RULE VIOLATED: 30 TAC §§122.145(2), 122.146(1), and 122.165(a)(8) and THSC, §382.085(b), by failing to submit timely annual permit compliance certifications, deviation reports, and certifications by a responsible official; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(21) COMPANY: Pine Tree Mobile Home Park Landowners Association; DOCKET NUMBER: 2004-0002-MWD-E; IDENTIFIER: TPDES Permit Number 13036-001; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: residential mobile home park; RULE VIOLATED: 30 TAC §§305.125(1), (4), and (5), 317.4(d), 317.6(b)(3), TPDES Permit Number 13036-001, and the Code, §26.121(a), by failing to comply with the permit limit for DO, by failing to properly maintain the mechanical operations of the clarifier, by failing to properly maintain the chlorine contact chamber, and by failing to submit the required discharge monitoring reports; 30 TAC §319.7(a) and (c), by failing to maintain calibration records for the dissolved oxygen meter and by failing to maintain the pH, DO, and chlorine logs; and 30 TAC §317.4(a)(8) and (g) and §317.7(i) and TPDES Permit Number 13036-001, by failing to protect the public water distribution system and by failing to maintain a proper solids inventory; PENALTY: \$0; ENFORCEMENT COORDINATOR:

Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Pleasant Oil Company, Inc.; DOCKET NUMBER: 2005-0582-PST-E; IDENTIFIER: RN102061991; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Reedhycalog, L.P.; DOCKET NUMBER: 2005-0004-IWD-E; IDENTIFIER: TPDES Permit Number 00635; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil and gas well drilling tool manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 00635, and the Code, §26.121(a), by failing to comply with permit effluent limits for total copper; PENALTY: \$864; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Sadruddin & Sons, Inc. dba Churchill Grocery; DOCKET NUMBER: 2005-0579-PST-E; IDENTIFIER: PST Facility Identification Number 14125, RN101906204; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST fees; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Superior Derrick Services, Inc.; DOCKET NUMBER: 2005-0269-MWD-E; IDENTIFIER: TPDES Permit Number 12443001, RN100869957; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), TPDES Permit Number 12443001, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia nitrogen and BOD5; PENALTY: \$3,120; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Tejas Petroleum Products, Inc. dba Tyler Marketing Chevron Bulk Plant; DOCKET NUMBER: 2005-0563-PST-E; IDENTIFIER: RN101841229; LOCATION: Athens, Henderson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(27) COMPANY: Abubaker Yusuf dba Texaco Service Station; DOCKET NUMBER: 2005-0453-PST-E; IDENTIFIER: PST Facility Identification Number 13575, RN102339405; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.8(c)(4)(C) and (5)(A)(i) and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification forms are fully and accurately completed and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: \$14,688; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2005-0540-AIR-E; IDENTIFIER: Air Account Number HG0036S, RN100212109; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(1), 101.221(a), and 116.115(c), Air Permit Number 3908B, 40 CFR §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions of volatile organic compounds and by failing to operate the flare with a flame at all times; PENALTY: \$12,880; ENFORCEMENT COORDINATOR: Trina Greico, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Union Water Supply Corporation; DOCKET NUMBER: 2005-0522-MWD-E; IDENTIFIER: RN102915501; LOCATION: Garciasville, Starr County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13842-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for DO, TSS, and BOD5; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay late fees; PENALTY: \$5,440; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Westwood Shores Municipal Utility District; DOCKET NUMBER: 2005-0597-MWD-E; IDENTIFIER: TPDES Permit Number 11300001, RN102916426; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11300001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS and flow and by failing to submit discharge monitoring reports; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200502837

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2005

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Request for Nominations for Appointment to the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality (commission) is soliciting nominations to fill several vacant positions on the Pollution Prevention Advisory Committee (PPAC) established under Texas Health and Safety Code, §361.0215. The legislatively created advisory committee advises the commission on the state's policy and goals for pollution prevention and waste minimization.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. All materials must be received by the commission no later than 5:00 p.m. on August 22, 2005.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community. The nine official members include: four environmental or public interest representatives; four regulated community representatives; and one representative from academia.

The commission may appoint *ex officio* members to provide additional participation from other members of the regulated community and the public who work on pollution prevention and performance-based regulatory initiatives. The commission currently has designated eight

ex officio positions including one representative from each of the following sectors: small business, local government, agriculture, Department of Defense, labor, and the Clean Texas, Cleaner World Program. The commission also extends *ex officio* positions to the Chairs of the House Environmental Regulation Committee and the Senate Natural Resources Committee.

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Texas Health and Safety Code, §361.023(a); and the implementation of the Recycling Market Development Implementation Program.

The PPAC also advises the commission on the creation and implementation of the strategically directed regulatory structure developed under Texas Water Code, §5.755, and reports quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important. The PPAC must report in writing to the commission a minimum of once per year, unless otherwise directed.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees. The PPAC meets a minimum of four times per year and as needed. Members may not miss three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. The meetings usually last one full day and are typically held at the commission headquarters in Austin, Texas. The 79th Texas Legislature authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed.

Except as otherwise provided by law, advisory committee members may serve two- or four-year terms. Please submit nomination(s) for consideration by the commission for the following terms:

Two representatives from an environmental or public interest group (vacant four-year term to expire on August 31, 2009);

Two representatives from the regulated community (vacant four-year terms to expire on August 31, 2009);

One representative from academia (vacant four-year term to expire on August 31, 2009); and

Ex officio appointments (with staggered terms) to fill vacant positions, including potential appointments for small business, agriculture, Department of Defense, Clean Texas, Cleaner World members, local government, labor organizations, and other interested parties.

Written nominations must be received in the Small Business and Environmental Assistance Division Office by 5:00 p.m. on August 22, 2005, via mail, hand delivery, e-mail, or fax. Nominations should be directed to: Ken Zarker, Small Business and Environmental Assistance Division (MC 112), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to kzarker@tceq.state.tx.us, or they can be faxed to (512) 239-3165.

Documents can be submitted via hand delivery to the Small Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC can be directed to Mr. Zarker at (512) 239-3145.

TRD-200502836

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 12, 2005

◆ ◆ ◆
Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Mission	Valley Positron LLC	L05869	Mission	00	06/23/05
San Antonio	Burge Consulting Engineers	L05907	San Antonio	00	06/23/05
Throughout Tx	Mikell Clifton Gallagher DBA Gallagher Materials Testing	L05897	Bryan	00	06/22/05
Throughout Tx	Siemens Medical Solutions USA Inc.	L05884	Dallas	00	06/21/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Amarillo Cardiovascular Center PC	L05577	Amarillo	03	06/09/05
Amarillo	North Texas Healthcare System Inc DBA Northwest Texas Hospital	L02054	Amarillo	76	06/13/05
Arlington	Columbia Medical Center of Arlington Subsidiary LP DBA Medical Center of Arlington	L02228	Arlington	62	06/10/05
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	17	06/20/05
Austin	Lower Colorado River Authority	L02738	Austin	36	06/22/05
Austin	PPD Development Inc DBA PPD Development	L04348	Austin	16	06/23/05
Austin	ARA Imaging	L05862	Austin	01	06/24/05
Beaumont	Metalforms Inc	L02261	Beaumont	32	06/14/05
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	52	06/08/05
Brownwood	Heart of Texas Internal Medicine Assoc PA	L05006	Brownwood	11	06/14/05
Bryan	St. Joseph Regional Health Center	L00573	Bryan	66	06/24/05
College Station	BCS Heart LLP	L04890	College Station	10	06/20/05
Commerce	Texas A&M University - Commerce	L00604	Commerce	39	06/10/05
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	11	06/16/05
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	35	06/21/05
Dallas	Cardiology & Interventional Vascular Assoc.	L05412	Dallas	03	06/09/05
Denton	Metro North Clinic	L05235	Denton	07	06/21/05
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	02	06/29/05
Edinburg	The University of Texas Pan American	L00656	Edinburg	27	06/10/05
Fort Worth	Osteopathic Surgery Center of Fort Worth DBA Physicians Surgical Center of Ft Worth	L05863	Fort Worth	01	06/10/05
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	15	06/14/05
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	14	06/22/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Harlingen	Harlingen Medical Center	L05587	Harlingen	01	06/22/05
Houston	Baylor College of Medicine DBA Baylor Heart Clinic	L05436	Houston	03	06/08/05
Houston	PETNET Houston LLC DBA PETNET Houston LLC	L05542	Houston	06	06/23/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	09	06/21/05
Houston	D-Arrow Inspection Inc.	L03816	Houston	76	06/16/05
Houston	Baylor College of Medicine	L00680	Houston	84	06/15/05
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Ctr	L04452	Houston	39	06/17/05
Houston	Baylor College of Medicine	L02397	Houston	15	06/29/05
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	56	06/23/05
Jewett	Nucor Steel	L02504	Jewett	16	06/21/05
La Grange	Fayette Memorial Hospital	L03572	La Grange	19	06/17/05
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	04	06/16/05
Lubbock	University Medical Center	L04719	Lubbock	79	06/20/05
Lubbock	Radiation Oncology of the South Plains PA DBA Lubbock Cancer Center	L05484	Lubbock	07	06/15/05
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research & Treatment Center	L04881	Lubbock	32	06/23/05
Lubbock	Eastern Isotopes Inc	L05482	Lubbock	08	06/29/05
Mesquite	Lone Star HMA LP DBA Mesquite Community Hospital	L02733	Mesquite	36	06/13/05
Midland	Endeavor Energy Resources LP	L05745	Midland	05	06/21/05
Midlothian	Holcim (Texas) LP	L05888	Midlothian	01	06/17/05
Mont Belvieu	Eagle X-Ray	L03246	Mont Belvieu	87	06/13/05
Throughout Tx	Big State X-Ray	L02693	Odessa	44	06/15/05
Orange	Cardinal Health 414 Inc DBA Cardinal Hlth Nuclear Pharmacy Servs	L04785	Orange	32	06/17/05
Paris	Advanced Heart Care PA	L05290	Paris	10	06/14/05
Pasadena	Syngenta Corp Protection Inc	L02216	Pasadena	26	06/14/05
Pasadena	Chevron Phillips Chemical Company	L00230	Pasadena	74	06/23/05
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	19	06/08/05
Richardson	Richardson Hospital Authority DBA Richardson Regional Medical Center	L02336	Richardson	43	06/10/05
Rockdale	ALCOA Power Plant	L04386	Rockdale	12	06/08/05
San Angelo	San Angelo Hospital LP DBA San Angelo Community Medical Ctr	L02487	San Angelo	38	06/13/05
San Antonio	University of Texas at San Antonio	L01962	San Antonio	53	06/21/05
San Antonio	Veterinary Imaging Center of South Texas PA	L05559	San Antonio	04	06/20/05
San Antonio	Southwest Genetics	L04490	San Antonio	10	06/15/05
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	46	06/16/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	136	06/16/05
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	27	06/16/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	204	06/24/05
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	13	06/29/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Temple	S&W Memorial Hospital & Scott Sherwood & Brindley Foundation DBA S&W Memorial Hospital	L00331	Temple	73	06/17/05
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	42	06/21/05
Throughout Tx	Troxler Electronic Laboratories	L01296	Arlington	38	06/23/05
Throughout Tx	Texas Department of Transportation	L00197	Austin	108	06/21/05
Throughout Tx	ECS-Texas LLP	L05319	Austin	02	06/17/05
Throughout Tx	Texas Department of Transportation	L00197	Austin	109	06/23/05
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	32	06/13/05
Throughout Tx	NDE Solutions LLC	L05879	Bryan	01	06/09/05
Throughout Tx	Brazos Valley Inspection Services Inc.	L02859	Bryan	45	06/16/05
Throughout Tx	DMG Equipment Co LTD DBA Pavers Supply Company	L04856	Conroe	05	06/10/05
Throughout Tx	Baylor College University Medical Center	L01290	Dallas	72	06/14/05
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	62	06/13/05
Throughout Tx	Radiographic Specialists Inc.	L02742	Houston	46	06/22/05
Throughout Tx	Protechnics Division of Core Laboratories LP	L03835	Houston	45	06/15/05
Throughout Tx	DMS Imaging DBA DMS Computed Imaging DMS Interim	L05594	Houston	03	06/16/05
Throughout Tx	Monitoring Services	L04501	Houston	09	06/29/05
Throughout Tx	Master Industries Inc	L05872	Liberty	01	06/28/05
Throughout Tx	Big State X-Ray	L02693	Odessa	44	06/15/05
Throughout Tx	T C Inspection Inc.	L05833	Oyster Creek	04	06/21/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	53	06/21/05
Throughout Tx	Fugro Consultants LP	L04322	Pasadena	77	06/16/05
Throughout Tx	IHI Southwest Technologies Inc.	L05279	San Antonio	03	06/17/05
Throughout Tx	Wrangler Wireline Inc.	L05404	Sour Lake	02	06/09/05
Throughout Tx	ETTL Engineers & Consultants Inc.	L01423	Tyler	33	06/21/05
Tyler	The University of Texas Health Ctr at Tyler	L04117	Tyler	33	06/09/05
Tyler	Nutech Inc	L04274	Tyler	50	06/13/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	Panhandle Nuclear Rx LTD	L04683	Amarillo	17	06/13/05
Houston	Houston Cardiovascular Associates	L05070	Houston	11	06/20/05
Irving	Abbott Laboratories	L04841	Irving	09	06/24/05
Lewisville	Columbia Med Ctr of Lewisville Subsidiary LP DBA Medical Center of Lewisville	L02739	Lewisville	46	06/21/05
San Antonio	O'Neill and Associates PA	L03710	San Antonio	13	06/20/05
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	12	06/20/05
Throughout Tx	Bryant Consultants Inc	L05096	Carrollton	06	06/22/05
Throughout Tx	Suntrac Services Inc.	L03062	League City	24	06/15/05
Throughout Tx	Frontera Materials Inc	L04830	Weslaco	11	06/09/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
College Station	Prodigene Inc	L05252	College Station	03	06/07/05
Throughout Tx	Haas-Anderson Construction Inc.	L05249	Corpus Christi	06	06/23/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Eric A Orzeck M.D.	L01599	Houston		06/14/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200502754
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 7, 2005



Notice of Agreed Order with East Texas Medical Center

On July 11, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and East Texas Medical Center (registrant-R22120) of Tyler. A total administrative penalty in the amount of \$10,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, \$10,000 will be probated for a period of 24 months, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502856
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005



Notice of Agreed Order with Eastex Veterinary Clinic, P.A.

On July 11, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Eastex Veterinary Clinic, PA (unregistered) of Beaumont. A total administrative penalty in the amount of \$8,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502855
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005



Notice of Emergency Cease and Desist Order on Empowerment Schools--Healthcare Limited

Notice is hereby given that the Department of State Health Services (department) ordered Empowerment Schools--Healthcare Limited (registrant--R28678) of Houston to cease and desist from deliberately applying radiation to individuals for training purposes with radiation machines.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502858

Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005



Notice of Hearing Concerning Amendment Number 32 to the License of Waste Control Specialists, L.L.C.

Notice is hereby given by the Department of State Health Services, Radiation Safety Licensing Branch (Department), that Administrative Law Judges (ALJs) from the State Office of Administrative Hearings (SOAH) will conduct a hearing on Amendment Number 32 to License Number LO4971 that was issued to Waste Control Specialists, L.L.C. (WCS) on February 23, 2005, for its facility located in Andrews County, Texas, one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line, 30 miles West of Andrews, Texas (SOAH Docket No. 537-05-5206).

Amendment No. 32 authorizes the construction of two new storage units for interim waste storage, and increases the authorized storage volume of radioactive material under the license in the amount of 1,500,000 cubic feet. Amendment No. 32 also specifies design and inspection standards associated with the volume increase.

In accordance with Texas Health and Safety Code, §401.054 and 25 Texas Administrative Code (TAC) §289.205(f), Notice of Amendment No. 32 was published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1530). The Department received two written requests for a hearing that were timely filed within 30 days after the notice was published in the *Texas Register*. In accordance with 25 TAC §289.205(f)(7), failure to have submitted a written request for a hearing within 30 days after the notice was published in the *Texas Register* could result in denial of party status.

The hearing will be conducted in accordance with the provisions of the Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the Department (25 TAC §§1.21 et seq.) and the procedures of the SOAH (1 TAC Chapter 155).

The preliminary hearing shall be held on **September 1, 2005, at 9:00 a.m.** at the hearings facility of the State Office of Administrative Hearings, located on the 4th floor of the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. At the preliminary hearing, the ALJs will consider Licensee's and the Department's offers of documents related to jurisdiction and notice, and requests for party status by persons who consider themselves affected and any objections to such requests. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, (a) is a resident of a county, or a county adjacent to that county, in which radioactive material is or will be located; or (b) is doing business or has a legal interest in land in the county or adjacent county. If it appears that the case will proceed to a hearing on the merits, the ALJs will also consider scheduling issues.

All visitors to the William P. Clements Building who do not have a ID badge issued by a state agency or the Department of Public Safety will need to sign a log and receive a visitor's pass from the building security officers on the first floor. Persons attending a SOAH hearing should identify to the security officer the hearing they are attending by providing the officer the SOAH docket number of the hearing (SOAH Docket No. 537-05-5206). Failure to provide the SOAH docket number or to otherwise satisfactorily identify the hearing to the officer may result in delaying your arrival to the hearing. Please allow additional

time for this new security process. If you have any questions, please contact SOAH Docketing at (512) 475-3445.

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Tountage, Custodian of Records, and Radiation Safety Licensing Branch.

TRD-200502850
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005



Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Thomas C. Cole, Jr., M.D., P.A., Huntsville, R02693; Dental Clinic, Marshall, R03717; Ross P. Kennedy, D.D.S., Inc., Houston, R06492; Edward D. Pernetter, D.D.S., Beaumont, R10309; James T. Halla, M.D., Abilene, R13478; TSC Dental Center, Houston, R15353; Clinica Espana, Dallas, R16135; Crown Chiropractic Clinic, Houston, R16177; Marvin Eugene Williams, D.D.S., Fort Worth, R16809; Southwest Therapies Partnership, Albuquerque, New Mexico, R18309; Rockwood Medical Clinic, Fort Worth, R18382; Robert L. Brannon, M.D., F.A.C.O.G., Dallas, R21383; D. R. Bellamy, D.C., Houston, R23484; Ella Family Medicine, P.A., Houston, R25912; Southwest Texas Bone and Joint Institute, Del Rio, R26054; Solvay Engineered Polymers, Mansfield, R26859; Big Grin Incorporated, Haltom City, R27876; McAllen Hospitals, LP, McAllen, Z00387; Acquire the Fire, Lindale, Z01623; Troixa Entertainment, Gaithersburg, Maryland, Z01706; Ebco Technologies Inc., Richmond, British Columbia, Canada, R27011.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502825

Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 11, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on David Thalman Vacuum Service, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to David Thalman Vacuum Service, Inc. (general licensee) of Carrizo Springs. A total penalty of \$5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502851
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Karnes County Hospital District, dba Otto Kaiser Memorial Hospital

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Karnes County Hospital District, dba Otto Kaiser Memorial Hospital (registrant--M00732-000) of Kenedy. A total penalty of \$21,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502755
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 7, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Radiation Oncology of the South Plains

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Radiation Oncology of the South Plains (registrant--R26000-000) of Lubbock. A total penalty of \$16,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502853
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Reed Engineering Group, Ltd.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Reed Engineering Group, Ltd. (licensee--L04343) of Dallas. A total penalty of \$4,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502852
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Trace Radiochemical, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Trace Radiochemical, Inc. (licensee--L05435) of Denton. A total penalty of \$4,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502854
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 13, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Ward Beecher, D.C., dba Beecher Chiropractic Clinic

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Ward Beecher, D.C., dba Beecher Chiropractic Clinic (registrant--R18620) of Houston. A total penalty of \$13,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502857

Cathy Campbell

General Counsel

Department of State Health Services

Filed: July 13, 2005

Texas Health and Human Services Commission

Request for Proposals

The Health and Human Services Commission (HHSC) announces the issuance of Request for Proposals (RFP) #529-5-03, "Managed Care Organizations (MCO) Management Information System (MIS)/Operations Readiness and Assessment Reviews." HHSC seeks a professional consultant and invites potential vendors to submit proposals to perform readiness reviews on Health Maintenance Organizations (HMOs) that will contract with HHSC under the Joint Medicaid/Children's Health Insurance Program (CHIP) HMO RFP #529-04-072. The selected vendor also will perform readiness reviews required due to system and/or operations functions changes of the currently contracted HMOs, the newly contracted HMOs, the currently contracted Exclusive Provider Organization (EPO), the currently contracted CHIP Dental Contractor, and any newly procured managed care contractor(s). HHSC originally issued this RFP on November 5, 2004, under RFP #529-05-003. Since that time, HHSC has revised the RFP and re-classified the services sought as consulting services. In addition, HHSC has renumbered RFP #529-05-003 as #529-5-03 and has deleted the requirement found in the original RFP that potential vendors submit a letter of intent in order to be eligible to submit a proposal. Notice of RFP #529-5-03 is being published in the *Texas Register* in accordance with the requirements of Chapter 2254, Subchapter B, Texas Government Code.

The consultant will be responsible for providing HHSC with an independent assessment that each HMO, EPO, CHIP Dental Contractor, or other managed care contractor has: (1) MIS and claims processing systems which are able to support the specific contractor's system and performance requirements related to the flow and use of data; (2) MIS and claims processing systems which comply with applicable state and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA); and (3) the ability to meet the operational requirements outlined in the specific contract.

A portion of the services described in this RFP comprise automated information services, including but not limited to information technology consulting. Before the effective date of any contract awarded under this RFP, the awarded vendor must be a Catalog Information Systems Vendor (CISV) as required by the Texas Building and Procurement Commission. Vendors who are not currently approved CISVs may download the Centralized Master Bidders List (CMBL) and CISV requirements at the following address: <http://www.tbpc.state.tx.us/stpurch/cisv.html>.

All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The consultant will be selected on the basis of demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fee for services. In accordance with the requirements of Chapter 2254, Subchapter B, Texas Government Code, preference will be given to a consultant whose principal place of business is within the state of Texas or who will manage the project entirely from its office in Texas, all other

considerations being equal. The Office of the Governor has already approved HHSC's finding of fact request for a major consulting contract.

Interested parties may obtain a copy of the revised RFP by downloading a copy from the HHSC website at: <http://www.hhsc.state.tx.us>, under the "Business Opportunities" link and then under the "Contracting Opportunities" link.

The HHSC Project Manager and sole point of contact for the procurement is:

Alice Newmann, Project Manager

Phone: (512) 491-1315

E-mail: alice.newmann@hhsc.state.tx.us

Mailing Address:

Procurement - H350

Texas Health and Human Services Commission

P.O. Box 85200

Austin, Texas 78708-5200

ATTN: Alice Newmann, Project Manager

Physical Address for overnight, commercial and hand deliveries:

Texas Health and Human Services Commission

c/o Alice Newmann, Project Manager

11209 Metric Blvd.

Building H, Suite A

Austin, Texas 78758

To be considered, all proposals must be received on or before 4:00 p.m., Central Time, on August 3, 2005. Proposals received after this time will not be considered.

The selected vendor will be expected to begin performance of the contract on or about October 1, 2005.

All questions concerning the RFP should be addressed to Alice Newmann at the address and telephone number stated above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice or the RFP. HHSC will not pay for any costs incurred by any entity in responding to this RFP.

TRD-200502848

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: July 12, 2005

Texas Department of Housing and Community Affairs

Request for Proposals

The Texas Department of Housing and Community Affairs (TDHCA) announces a Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education and to certify participants as homebuyer education providers.

I. Introduction

Section 2306.253, Government Code, enacted in 1997, charged TDHCA to develop and implement a statewide homebuyer education program designed to provide information and counseling to prospective homebuyers about the home buying process. The Texas Statewide Homebuyer Education Program (TSHEP) was created to fulfill this mandate.

TDHCA is committed to increasing homeownership across the State of Texas through homebuyer education. Expanding the availability of homebuyer education and providing access to counseling to all Texans not only benefits the new homeowner, but also greatly improves the sustainability of communities. To this end, TSHEP aims to provide comprehensive homebuyer education across the state without duplicating the efforts of existing successful homebuyer education programs.

TSHEP will train local nonprofit organizations to initiate coverage in underserved areas of the state. To ensure that the provided homebuyer education is of uniform quality statewide, TSHEP will sponsor at least two and as many as four weeks of homebuyer education provider training workshops. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post-purchase homebuyer education, and to certify participants as TSHEP providers. The training series will include at least two "Train the Trainer" workshops. Other workshops on topics TDHCA deems appropriate may also be included as part of the training series.

II. Request for Proposals

TDHCA is seeking proposals to provide training to nonprofit organizations throughout Texas. Such nonprofit organizations may include Texas Cooperative Extension offices, units of local governments, faith-based organizations, community housing development organizations, community development corporations, community-based organizations, and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post-purchase homebuyer education and to certify participants as providers. TDHCA will contract for at least two and as many as four weeks of training with a maximum of 40 participants per class. TDHCA will review and select the participants. The training locations will be determined by TDHCA and will be held in geographically diverse areas of the state.

Training topics must include, but are not limited to, the following:

Pre- and post-purchase counseling (including information related to home equity loans and reverse mortgages)

Delinquency and default counseling

Delinquency intervention

How to access affordable single family mortgage products

How to reach traditionally underserved populations (including lower income persons/households, persons with disabilities, and persons living in colonias)

Ethics issues for counselors

Track development (e.g., fast, regular)

Predatory and subprime lending

Fair housing and lending laws

Effective training methods

Basic financial literacy

The successful applicant will need to demonstrate the ability to tailor each class to the needs of individual attendees, as the participant experience will vary widely. Specifically, the applicant should demonstrate

the capacity to provide basic, intermediate, and advanced courses on homebuyer education training in both English and Spanish.

The successful applicant will be responsible for coordinating its training personnel's hotel and travel arrangements, providing course materials, and providing for any audio/visual needs. These items should be considered when preparing a budget.

The successful applicant will be responsible for administering a "Homebuyer Education Provider Certification" exam at the end of each training session. A report of the participants' results must be submitted to TDHCA within 30 days of the completion of each training session.

The successful applicant will be paid on a reimbursement basis. Payment will be made within 60 days of the completion of each training session performed in accordance with the contract or a one-time payment upon conclusion of the training series.

III. Response Time Frame and Other Information

An original proposal and two copies must be submitted to the following address:

Texas Department of Housing and Community Affairs

Attn: Alyssa Carpenter, Division of Policy and Public Affairs

PO Box 13941

507 Sabine, Suite 900

Austin, TX 78711-3941

Proposals must be received by TDHCA no later than 5:00 pm on Friday, August 19, 2005. No proposals will be accepted after the deadline. Faxed or emailed applications will not be accepted.

Questions concerning this Request for Proposals may be directed in writing to TDHCA, attention Alyssa Carpenter, Division of Policy and Public Affairs, at the addresses above or by email at alyssa.carpenter@tdhca.state.tx.us.

IV. Proposal Content

Under the parameters of this request, a maximum of 100 points can be awarded to a properly submitted proposal. Proposals will be scored on the following criteria.

(1) Description of Services to be Rendered to TDHCA, 45 points

(a) A narrative description, not longer than three typewritten pages in length, of services the organization will provide to training seminar participants. The narrative should include information on the following aspects of the organization's homebuyer education training:

Content

Delivery

Format

Certification process

(b) The agenda for the seminar and all training materials to be provided to seminar participants should be submitted as Attachment 1.

(2) Experience of the Organization, 25 points

(a) A narrative description, not longer than three typewritten pages in length, of the organization's history and mission of providing training to homebuyer education providers. This narrative should include the following:

The number of classes offered in both English and Spanish since 2000

The number of years of offering training to trainers

The number of persons certified

(b) A list of past training services provided by the organization should be submitted as Attachment 2.

(3) Personnel Qualifications, 19 points

(a) A summary of the names, titles, office locations, and years of experience in training homebuyer education providers (including information on the years of training experience in both English and Spanish) for all persons to be assigned any of the responsibilities concerning this proposal. Brief resumes should also be provided for each staff member.

(b) A written description of duties assigned to each individual on the list of previous homebuyer counseling training services listed under "Item (1) Experience of the Organization."

(4) Budget, 5 points

An itemized budget, by individual training session, that outlines all costs to be covered by TDHCA (e.g., travel, materials, salaries, etc.). The method of calculation for each cost estimate should be described.

(5) Financial Condition, 5 points

A copy of the organization's most recent annual audited financial statements should be submitted as Attachment 3.

(6) Historically Underutilized Business Participation, 1 Point

Applicants are required to submit a current minority and women profile of their organization in terms of ownership and management, as well as by professional, administrative, and clerical and support personnel.

It is TDHCA policy to encourage the participation of minorities and women in all facets of its activities. The extent to which minorities and women participate in the ownership, management, and professional workforce of a firm will be considered by TDHCA in selecting a training organization.

V. Scope of Services

It shall be within the scope of TDHCA to renew and extend the contract at the end of the contract period. TDHCA reserves the right to issue a Request for Proposals for training services at any such time after the expiration of the term of the contract for services.

VI. Public Information Act

Information submitted to TDHCA is public information and available upon request from the Department in accordance with the Texas Public Information Act, Chapter 552, of the Government Code. If requested, information will be released after the evaluation process has been completed and the TDHCA Board has approved the selection of the training organization.

An organization submitting any information it considers confidential because it is a trade secret or commercial or financial information must clearly identify such information in the proposal. If such information is requested from TDHCA, the organization will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination as to whether the information will be disclosed under the Act. Information not clearly identified as confidential will be deemed nonconfidential and will be made available by TDHCA upon request.

VII. Costs Incurred in Responding

All costs directly or indirectly related to the preparation of a response to this Request for Proposals or any oral presentation required to supplement and/or clarify the proposal that may be required by TDHCA shall be the sole responsibility of, and shall be borne by, the applicant organization.

VIII. Additional Information

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate accommodations can be made.

TDHCA reserves the right to accept or reject any (or all) proposals submitted under this Request for Proposals. The information contained in this Request for Proposals is intended to serve only as a general description of the services sought by TDHCA. In releasing this request, TDHCA is not obligated to proceed with any action, and may decide it is in the Department's best interest to discontinue consideration of services. TDHCA reserves the right, with 30 days written notice, to cancel any contract awarded under the terms of this Request for Proposals.

TRD-200502849

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 13, 2005

Texas Department of Insurance

Company Licensing

Application to change the name of EDUCATORS MUTUAL LIFE INSURANCE COMPANY to EASTERN LIFE AND HEALTH INSURANCE COMPANY a foreign Life, Accident and/or Health company. The home office is in Lancaster, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200502865

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: July 13, 2005

Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application to change the name of LIBERTY INSURANCE SERVICES CORPORATION to IBM BUSINESS TRANSFORMATION OUTSOURCING INSURANCE SERVICES CORPORATION, a foreign third party administrator. The home office is GREENVILLE, SOUTH CAROLINA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200502864

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: July 13, 2005

Legislative Budget Board

Notice of Contract Award

The Legislative Budget Board (LBB) announces this notice of contract award. The original notice of request for proposals (HB7.2005.SPR.0007) was published in the April 1, 2005, issue of the *Texas Register*. The consultant will advise and assist the LBB in conducting a management and performance review of the Austwell-Tivoli Independent School District. The contract is awarded to MGT of America, Inc. located at 502 E. 11th Street, Suite 300, Austin, Texas 78701. The total amount of the contract is estimated at \$42,500. The contract was executed on April 21, 2005. The term of the contract is April 21, 2005 until January 31, 2006. The final report is due on or about August 9, 2005.

TRD-200502830
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 12, 2005



Notice of Contract Award

The Legislative Budget Board (LBB) announces this notice of contract award. The original notice of request for proposals (HB7.2005.SPR.009) was published in the April 8, 2005, issue of the *Texas Register*. The consultant will advise and assist the LBB in conducting a management and performance review of the Hearne Independent School District. The contract is awarded to WCL ENTERPRISES located at P.O. Box 941328, Houston, Texas 77094. The total amount of the contract is estimated at \$84,570. The contract was executed on June 30, 2005. The term of the contract is June 30, 2005 until May 31, 2006. The final report is due on or about December 20, 2005.

TRD-200502832
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 12, 2005



Notice of Contract Award

The Legislative Budget Board (LBB) announces this notice of contract award. The original notice of request for proposals (HB7.2005.SPR.0010) was published in the April 8, 2005, issue of the *Texas Register*. The consultant will advise and assist the LBB in conducting a management and performance review of the San Elizario Independent School District. The contract is awarded to WCL ENTERPRISES located at P.O. Box 941328, Houston, Texas 77094. The total amount of the contract is estimated at \$108,070. The contract was executed on June 14, 2005. The term of the contract is June 14, 2005 until May 31, 2006. The final report is due on or about December 13, 2005.

TRD-200502831
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 12, 2005



Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0012) to solicit proposals from qualified, independent consultants to assist the LBB in conducting

management and performance reviews of selected independent school districts on an as-assigned, as-requested basis. The LBB anticipates selecting multiple consultants for execution of consulting services agreements, if any; however, if awards of consulting services agreements are made under this RFP, the LBB does not guarantee any minimum amount of work or amount of compensation under any such agreement. The selected respondents, if any, will become part of a group of consultants from which the LBB will assign all or part of a review, based upon the school review functional area(s) for which that Consultant is pre-qualified.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, Robert E. Johnson Building, 5th Floor, 1501 N. Congress, Austin, Texas 78701, telephone number: (512) 463-1200; fax number: (512) 475-2902; email address: bill.parr@lbb.state.tx.us to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on July 7, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us> and on the LBB website at <http://www.lbb.state.tx.us> after 10:00 a.m. CZT, on July 7, 2005.

Questions: All questions regarding the RFP must be sent via fax to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on July 19, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than July 20, 2005, or as soon thereafter as practical.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on August 5, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the selection of consultants who are pre-qualified to conduct management and performance reviews of school districts on an as-assigned, as-requested basis.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 7, 2005, after 10:00 a.m. CZT; Questions Due - July 19, 2005, 2:00 p.m. CZT; Official Responses to Questions Posted - July 20, 2005, or as soon thereafter as practical; Proposals Due - August 5, 2005, 2:00 p.m. CZT; Approval of Pre-Qualified Vendor List - August 19, 2005, or as soon thereafter as practical.

TRD-200502790
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 11, 2005



Public Utility Commission of Texas

Draft Amendments (Strawman) to §25.214 and the Pro-Forma Retail Electric Delivery Service Tariff Available for Comments

The Public Utility Commission of Texas (commission) has issued for public comment a strawman draft of amendments to §25.214 and the Pro-Forma Retail Delivery Service Tariff. The draft has been filed in Project 29637 and can be accessed on the PUC website at <http://www.puc.state.tx.us/rules/rulemake/29637/29637.cfm>.

Comments on the draft amendments to §25.214 and the Pro-Forma Tariff (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, before 3:00 p.m. on Thursday, August 11, 2005, and reply comments may be submitted before 3:00 p.m. on Monday, August 22, 2005.

Comments should be organized in a manner consistent with the organization of the draft amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the draft sections as well as comments on the following questions:

Question 1: Should the commission standardize actual charges for discretionary services? If so, how should this be implemented?

Question 2: Should the commission require TDSPs to send a letter to the customer if the TDSP is unable to access the meter, or is the "door hanger" notice proposed in the tariff sufficient to deal with the TDSP access issue? How should the issue of TDSP access to the meter be handled?

Question 3: If a Retail Customer pays in advance or as a Contribution in Aid of Construction (CIAC), should a pro-rated amount be returned to them as other customers connect to the facilities the CIAC was paid upon and the return amount billed to new customers? If so, should this expire at a certain time (for example one or two years after the CIAC is paid)?

Question 4: Should the commission approve TDSP estimation procedures for meter reading?

Question 5: In considering the strawman proposal related to REP deposits, should the commission consider alterations to other rules?

All comments should refer to Project Number 29637.

Questions regarding this notice should be referred to Shawnee Claiborn-Pinto, Retail Market Analyst, Electric Division, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200502841

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2005

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Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Loving, Ward and Winkler Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 7, 2005, for service area exception within Loving, Ward and Winkler Counties, Texas.

Docket Style and Number: Application of TXU Electric Delivery Company for a Certificate of Convenience and Necessity for Service Area Boundaries for a Service Area Exception within Loving, Ward and Winkler Counties. Docket Number 31324.

The Application: TXU Electric Delivery Company requested a service area exception to allow Texas-New Mexico Power Company (TNP) to

provide electric service to a single point of service. TNP has requested that TXU Electric Delivery Company agree to a service area exception to allow for TNP to serve McCabe Energy, Inc. because TNP has facilities closest to the site. TXU Electric Delivery Company and TNP agree to the service area exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 2, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 31324.

TRD-200502839

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on July 7, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the Prosper, McKinney, and Frisco Exchanges. Docket Number 31327.

The Application: The minor boundary amendment is being requested to transfer a small portion of serving area from the McKinney and Frisco exchanges to the Prosper exchange of SBC Texas. This minor boundary amendment will allow SBC to create a more clearly-defined boundary in this area to accommodate a number of new subdivisions and office buildings that are planned for construction in the area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 2, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 31327.

TRD-200502840

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 12, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 5, 2005, American Fiber Network, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60444. Applicant intends to reflect a change in ownership/control to Mobilepro.

The Application: Application of American Fiber Network, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31314.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 27, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31314.

TRD-200502759
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On June 30, 2005, State Pre-Pay TeleCom, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60380. Applicant intends to relinquish its certificate.

The Application: Application of State Pre-Pay TeleCom, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31301.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 20, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31301.

TRD-200502760
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On July 7, 2005, Cirro Corp. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60493. Applicant intends to relinquish its certificate.

The Application: Application of Cirro Corp. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31323.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 27, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31323.

TRD-200502838

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2005

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Notice of Filing Made for Approval of a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Brazoria Telephone Company (Brazoria) with the Public Utility Commission of Texas (commission) on June 20, 2005, to make a tariff rate change.

Docket Title and Number: Application of Brazoria Telephone Company (Brazoria) for Approval of Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 31258.

The Application: Brazoria has filed a statement of intent with the commission to increase the rates for Directory Assistance for direct-dialed local and intraLATA calls to Directory Assistance. This change does not alter the allowance for the first three calls to Directory Assistance in any given month.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Brazoria Telephone Company at 314 West Texas Street, Brazoria, Texas 77422 or call (979) 798-2121 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is August 31, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200502758
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2005

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Notice of Relinquishment of Designation as an Eligible Telecommunications Carrier/Eligible Telecommunications Provider

Notice is given to the public of notice filed with the Public Utility Commission of Texas on June 29, 2005, of Connect Paging, Inc. d/b/a Get A Phone for relinquishment of designation as an eligible telecommunications carrier/eligible telecommunications provider.

Docket Title and Number: Notice of Relinquishment of Designation of Connect Paging, Inc. d/b/a Get A Phone as an Eligible Telecommunications Carrier/Eligible Telecommunications Provider. Docket Number 31300.

The Application: The company is requesting to relinquish its designation as an eligible telecommunications carrier/eligible telecommunications provider.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 11, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31300.

TRD-200502757

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 7, 2005



Request for Proposal

Project description. The Public Utility Regulatory Act (PURA) Chapter 39 (specifically, §39.905) allows electric utilities to administer energy savings incentive programs in a market-neutral, nondiscriminatory manner. All customers in all customer classes have a choice of and access to energy efficiency alternatives and other choices from the market that allow a reduction in energy consumption and energy costs. Each utility is required to provide programs and incentives for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility's annual growth in demand. The independent Measurement & Verification Expert shall produce a report to include verification of the utilities 2003 and 2004 energy and peak demand savings, review the reasonableness of the applied deemed savings, evaluation of the application process and utility inspection procedures. The costs and expenses of the Measurement & Verification report, as approved by the commission, will be paid by TXU Electric Delivery Company, Centerpoint Energy, American Electric Power Companies in Texas (Texas Central Company, Texas North Company and Southwestern Electric Power Company), Texas New Mexico Power Company, Entergy Gulf States, Inc. and Xcel.

Interested respondents may wish to review PUCT Substantive Rule §25.181 in its entirety and other relevant PUCT rules and statutes that are available on the PUCT website at www.puc.state.tx.us/rules/index.cfm.

Eligible Proposers. Pursuant to the Public Utility Regulatory Act (PURA) Chapter 39 (specifically, §39.905) which sets forth the Goal for Energy Efficiency and PUCT Substantive Rule §25.181 which lists the Measurement & Verification Expert's performance requirements, the PUCT is requesting proposals from recognized businesses with demonstrated experience in the United States electric industry with the capability to meet the project scope; the resources to meet the performance requirements; and which have no real or perceived conflict of interest in relation to the PUCT's Energy Efficiency programs.

Price. Costs must be justified in terms of activities and objects of expenditure and must be reasonable and necessary to provide the required services. The proposer must distinguish between labor and non-labor costs.

Selection criteria. The evaluation team will recommend selection of a proposal for this program based on a number of factors, including: 1) the proposer's ability to provide the required services, 2) demonstrated competence and qualifications of the proposer, and 3) the reasonableness of the proposed fee. A team of staff evaluators will review all the proposals submitted. A description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the RFP. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax at (512) 936-7058, or by email at ben.delamater@puc.state.tx.us. The RFP will be available on Wednesday, July 27, 2005 and will be e-mailed on that date to all parties who have requested a copy. You may also download the RFP from the PUCT website www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at www.marketplace.state.tx.us.

Deadline for receipt of proposals. Proposals must be received no later than 3:00 p.m. on Friday, August 26, 2005, in the Public Utility Commission of Texas Central Records, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701. Proposals received in Central Records after 3:00 p.m. on Friday, August 26, 2005 will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. Regardless of the method of submission of the proposal, the commission will rely solely on the time date stamp of Central Records in establishing the time and date of receipt. Proposals should be filed under Project Number 30170.

TRD-200502868

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 13, 2005



Texas Residential Construction Commission

Correction of Error

The Texas Residential Construction Commission proposed new rule, 10 TAC §303.300, in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3704). There are two typographical errors in the text of the proposed rule.

On page 3705, first column, §303.300(b)(1), the definition of "Applicant" should end with a period.

On page 3707, first column, §303.300(d)(3), the word "institution" should read "institution's".

TRD-200502829



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

In accordance with Title 43 Texas Administrative Code §15.8(d), the Texas Department of Transportation (TxDOT) will hold a public hearing on Thursday, August 4, 2005, at 11:00 a.m. at 200 East Riverside Drive, Room 1A-1, Austin, Texas, to receive public comments on the Statewide Transportation Improvement Program (STIP) for fiscal year (FY) 2006-2008. The STIP reflects the federally funded transportation projects in the FY 2006-2008 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP will include both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in those areas of the state that are not included in any MPO area, and other statewide programs.

Title 23, United States Code, §134 and §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the

Transportation Equity Act for the Twenty-first (21st) Century (TEA-21), require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for the next three years for transportation projects under Title 23 or the Federal Transit Act (49 U.S.C. 5301, et seq.).

Section 134(h) requires an MPO to develop its TIP, in cooperation with the state and affected transit operators, to provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed TIP, and further requires the TIP to be updated at least once every two years and be approved by the MPO and the Governor or Governor's designee. Section 135(f) requires the state to develop an STIP for all areas of the state in cooperation with those designated MPO's, and further requires that citizens, affected public agencies, representatives of transportation agency employees, other affected transportation employee representatives, private providers of transportation, and other interested parties, be provided with a reasonable opportunity to comment on the proposed STIP.

A copy of the proposed FY 2006-2008 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, second floor, 118 East Riverside Drive, Austin, Texas, and on TxDOT's website at: www.dot.state.tx.us.

Persons wishing to review the STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5023.

Persons wishing to speak may register in advance of the hearing by notifying Michelle Conkle, Transportation Planning and Programming Division, at (512) 486-5023 no later than Monday, August 1, 2005, or they may register at the hearing location between 10:00 a.m. and 10:45 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Randall Dillard, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8613. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2006-2008 STIP may be obtained from Michelle Conkle, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5023. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office no later than August 15, 2005, at 4:00 p.m.

TRD-200502847

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: July 12, 2005

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Mercedes, 400 South Ohio, Mercedes, Texas, 78570, received May 2, 2005, application for financial assistance in the amount of \$1,265,000 from the Clean Water State Revolving Fund.

Texas State University, River Systems Institute, Clevenger House, San Marcos, Texas, 78666, received June 8, 2005, application for financial assistance in an amount not to exceed \$25,000 from the Research and Planning Fund.

MFG Consulting Scientists and Engineers, 4807 Spicewood Springs Road, Bldg IV, 1st Floor, Austin, Texas, 78759-8444, received June 8, 2005, application for financial assistance in an amount not to exceed \$25,000 from the Research and Planning Fund.

Daniel B. Stephens and Associates, 4030 West Braker Lane, Suite 325, Austin, Texas, 78759, received June 8, 2005, application for financial assistance in an amount not to exceed \$25,000 from the Research and Planning Fund.

AICP AQUA Consulting Services, LLC1807 Slaughter Lane, Suite 200-494, Austin, Texas, 78748-6230, received June 8, 2005, application for financial assistance in an amount not to exceed \$25,000 from the Research and Planning Fund.

GEOS Consulting, 7205 Towering Oaks Drive, Austin, Texas, 78745-5224, received June 8, 2005, application for financial assistance in an amount not to exceed \$25,000 from the Research and Planning Fund.

Texas A&M University, TAES, Spatial Science Laboratory, 1500 Research Parkway, Suite B223, College Station, Texas, 77843-2120, received June 8, 2005, application for financial assistance in an amount not to exceed \$60,000 from the Research and Planning Fund.

LBG Guyton Associates, 1101 South Capital of Texas, Suite B-220, Austin, Texas, 78746-6437, received June 8, 2005, application for financial assistance in an amount not to exceed \$60,000 from the Research and Planning Fund.

Texas State University, 601 University Drive, San Marcos, Texas, 78666-4616, received June 6, 2005, application for financial assistance in an amount not to exceed \$60,000 from the Research and Planning Fund.

University of Texas, Center for Research in Water Resources, P. O. Box 7726, Austin, Texas, 78713-7726, received June 8, 2005, application for financial assistance in an amount not to exceed \$60,000 from the Research and Planning Fund.

Intera Incorporated, 9111A Research Blvd., Austin, Texas, 78757, received June 8, 2005, application for financial assistance in an amount not to exceed \$60,000 from the Research and Planning Fund.

Texas A&M University, Research Foundation, 3578 TAMU, College Station, Texas, 77843-3578, received June 8, 2005, application for financial assistance in an amount not to exceed \$100,000 from the Research and Planning Fund.

Texas State University, 601 University Drive, San Marcos, Texas, 78666-4616, received June 6, 2005, application for financial assistance in an amount not to exceed \$100,000 from the Research and Planning Fund.

Daniel B. Stephens & Associates, 4030 West Braker Lane, Suite 325, Austin, Texas, 78759, received June 8, 2005, application for financial assistance in an amount not to exceed \$100,000 from the Research and Planning Fund.

Freese and Nichols, Inc., 10814 Jollyville Road., Bldg. 4, Suite 100, Austin, Texas, 78759, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

University of Texas, Center for Research in Water Resources, P. O. Box 7726, Austin, Texas, 78713-7726, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

URS Corporation, 9400 Amberglen Blvd., Austin, Texas, 78729, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

Intera Incorporated, 9111A Research Blvd., Austin, Texas, 78757, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

Espey Consultants, Inc., 3809 South Second Street, Suite B-300, Austin, Texas, 78704, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

HDR Engineering Inc., 4401 West Gate Blvd., Suite 400, Austin, Texas, 78745, received June 8, 2005, application for financial assistance in an amount not to exceed \$150,000 from the Research and Planning Fund.

University of Texas, Bureau of Economic Geology, Box 7726, University Station, Austin, Texas, 78713, received June 7, 2005, application for financial assistance in an amount not to exceed \$50,000 from the Research and Planning Fund.

Texas Nursery and Landscape Association, 7730 South IH 35 Austin, Texas, 78745-6698, received June 8, 2005, application for financial

assistance in an amount not to exceed \$50,000 from the Research and Planning Fund.

Franklin Engineering Associates, LLC 10003 Creek Bend Drive, Woodway, Texas, 76712, received June 8, 2005, application for financial assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

University of Texas at San Antonio, 6900 North Loop 1604 West, San Antonio, Texas, 78249-0663, received June 8, 2005, application for financial assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

Texas A&M University, Engineering Experiment Station, Wisenbaker Engineering Research Center, College Station, Texas, 77843-3577, received June 8, 2005, application for financial assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

J. Brandes Company, 4900 Spicewood Springs Road, Austin, Texas, 78759, received June 8, 2005, application for financial assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

University of Texas, Center for Research in Water Resources, P. O. Box 7726, Austin, Texas, 78713-7726, received June 8, 2005, application for financial assistance in an amount not to exceed \$75,000 from the Research and Planning Fund.

Texas A&M University, TAES, 6500 Amarillo Blvd., Amarillo, Texas, 79106, received June 7, 2005, application for financial assistance from the Research and Planning Fund.

TRD-200502867

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: July 13, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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